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## TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

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No. 151

PEARL E. DEPUTY AND THE SUSSEX TRUST COMPANY,  
ETC., PETITIONERS

vs.

PIERRE S. DUPONT

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT

---

PETITION FOR CERTIORARI FILED JUNE 28, 1939  
CERTIORARI GRANTED OCTOBER 9, 1939

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UNITED STATES OF AMERICA, } ss.:  
DISTRICT OF DELAWARE, }

BE IT REMEMBERED, that at a District Court of the United States for the District of Delaware, begun and held at the United States Court House and Post Office Building, in the City of Wilmington, in said District of Delaware, among other, the following proceedings were had, to wit:

PIERRE S. DU PONT,  
*Plaintiff,*

v.

WILLARD F. DEPUTY, Collector of  
Internal Revenue for the Dis-  
trict of Delaware,

*Defendant.*

No. 2.

September Term, 1936.

### DOCKET ENTRIES.

- Sept. 4, 1936. Præcipe filed; same day subpoena issued returnable 2d Tuesday in September, 1936.
- Sept. 5, 1936. Declaration filed.
- Sept. 8, 1936. Marshal returns on summons "Served," &c.; same day writ filed.
- Nov. 18, 1936. Defendant appears by John J. Morris, Jr., Esq., U. S. Attorney; same day præcipe filed.
- Nov. 18, 1936. Rule pleas on or before January 1, 1937. (Exit rule).
- Dec. 11, 1936. Defendant's pleas filed and rule replications on or before December 21, 1936. (Exit rule).

*Docket Entries*

- Dec. 12, 1936. Reps. and issues filed.
- Dec. 12, 1936. Stipulation that case be tried before the court without a jury, filed.
- Feb. 22, 1937. Certificate of disqualification by Hon. John P. Nields, filed.
- Mar. 22, 1937. Stipulation filed.
- Mar. 22, 1937. Stipulation of facts filed.
- Mar. 22, 1937. Trial.
- Apr. 12, 1937. Plaintiff's requests for findings of fact and conclusions of law, filed.
- May 5, 1937. Motion of plaintiff filed; same day order extending time for filing plaintiff's reply brief until May 15, 1937; same day order filed.
- May 5, 1937. Defendant's requests for findings of fact and conclusions of law, filed.
- May 21, 1937. Motion of plaintiff filed; same day order extending time for filing plaintiff's reply brief until June 1, 1937; same day order filed.
- June 1, 1937. Motion of plaintiff filed; same day order extending time for filing plaintiff's reply brief until June 7, 1937; same day order filed.
- June 9, 1937. Hearing on pleadings and proofs.
- Feb. 21, 1938. Findings of fact, conclusions of law and opinion of court, filed.
- Mar. 22, 1938. Plaintiff's exceptions, filed.
- Apr. 6, 1938. Order overruling plaintiff's exceptions and that judgment be entered for plaintiff.

**Judgment.**

And now, to wit, this sixth day of April, A. D. 1938, it is considered and adjudged by the court now here that the said Pierre S. du Pont, plaintiff, do have and recover of and from the said Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, defendant, the sum of fifty-four thousand four hundred thirty-nine dollars and fifty-two cents (\$54,439.52) with interest thereon from September 24, A. D. 1935,

Attest:

(Sgd.) H. C. MAHAFFY, JR., Clerk

- Apr. 27, 1938. Petition of plaintiff for appeal with assignments of error, filed; same day order allowing appeal, bond in the sum of \$250.; same day order filed.
- Apr. 27, 1938. Order approving bond of plaintiff on appeal in the sum of \$250, with Great American Indemnity Company as surety; same day bond filed.
- Apr. 27, 1938. Citation issued.
- May 2, 1938. Marshal returns on Citation "Served", &c.; same day writ filed.
- May 19, 1938. Bill of exceptions signed, sealed and filed.
- July 6, 1938. Stipulation for diminuation of record filed.



**DECLARATION.**

(Filed September 5, 1936.)

IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF DELAWARE.

PIERRE S. DU PONT,

*Plaintiff,*

*v.*

WILLARD F. DEPUTY, Collector of Internal Revenue for the District of Delaware,

*Defendant.*

No. 2.

September Term,  
A. D. 1936.

SUMMONS CASE.

DISTRICT OF DELAWARE, ss:

Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, defendant in the above-entitled cause, was summoned to answer Pierre S. du Pont, plaintiff in the above-entitled cause, of a plea of trespass on the case upon promises and thereupon the said plaintiff by Richards, Layton & Finger, his attorneys, avers that this is an action under Section 3226 of the Revised Statutes of the United States as amended, to recover monies wrongfully collected by the defendant from said plaintiff as income taxes and interest thereon and, so averring, complains:

(1) FOR THAT WHEREAS, heretofore, to-wit, at the time of making the payment to the defendant which is hereinafter mentioned, and at all times subsequent thereto, plaintiff was and is a resident of the state of Delaware, and defendant was and is the Collector of Internal Revenue for the District of Delaware and a resident of the State of Delaware; that this suit is a suit of a civil nature arising under the laws of the United States, to-wit, the Revenue Acts thereof; that in accordance with the requirements of the Act of

*Declaration*

Congress in that behalf, plaintiff duly filed a return of his income for the year of 1931 with the Collector for the District of Delaware, showing thereon no net taxable income for the year of 1931; that thereafter, in or about the month of September, 1935, the Commissioner of Internal Revenue of the United States determined and assessed against the plaintiff upon account of plaintiff's income for the year of 1931, a deficiency in tax in the amount of \$142,466.79, payment of which, together with interest thereon in the amount of \$29,884.85, defendant demanded of plaintiff; that plaintiff, on or about September 24, 1935, by reason of the assessment and demand aforesaid, and as he was authorized and required by law to do, paid under protest to defendant, the said amounts of \$142,466.79 and \$29,884.85, without, however, in any wise admitting that said amounts, or either of them, were lawfully due as additional income tax, or interest thereon, with respect to his income for the said year, 1931; that on or about March 2, 1936, plaintiff duly filed with defendant a claim for refund of said amounts of \$142,466.79 and \$29,884.85, paid as aforesaid, which amounts are alleged by plaintiff in said claim to be due to him as and for a refund of an overpayment of the amount justly and legally due to defendants as federal income tax upon plaintiff's income for the year 1931, by reason of the refusal of the Commissioner of Internal Revenue to allow a deduction in determining the plaintiff's income tax liability for the year of 1931, the amount paid by the plaintiff in the year of 1931 on account of his liability under a written agreement with Delaware Realty and Investment Company for the use of certain securities borrowed by the plaintiff as hereinafter referred to; . . . that said claim was filed by plaintiff as aforesaid within the statutory period of limitations and according to the provisions of law in that regard, and the Regulations

of the Secretary of the Treasury of the United States established in pursuance thereof; that more than six months has elapsed since the date of filing of such claim for refund as aforesaid without the Commissioner of Internal Revenue having rendered a decision thereon; that defendant has withheld and refused to pay to plaintiff said sums of \$142,466.79 and \$29,884.85, or any part thereof; that the overpayment of tax made by plaintiff as aforesaid, and for which the said claim for refund was filed, and which is set forth in said claim for refund, and which plaintiff seeks to recover in this action arises from the following facts, viz:

In 1919 the plaintiff borrowed certain shares of the capital stock of E. I. du Pont de Nemours Company from Christiana Securities Company. In 1929 the plaintiff borrowed from Delaware Realty and Investment Company, a sufficient number of shares of said stock to satisfy his obligations to Christiana Securities Company. Under a written agreement with Delaware Realty and Investment Company, the plaintiff was required to deposit certain collateral with said Company, and he also became obligated by said written agreement to pay said Company an amount equal to all cash and property dividends declared and paid on said borrowed stock and to reimburse said Company for any lawful tax liability, federal or state, that might accrue against and be paid by said Company on account of the receipt of said payments required to be made by the plaintiff. During the year 1931, plaintiff paid to said Delaware Realty and Investment Company pursuant to such agreement, \$567,648. representing an amount equal to the dividends declared and paid upon said borrowed stock, together with an amount of \$80,063.56 representing an amount equal to the taxes asserted against and paid by said Delaware Realty and Investment Company, on account

*Declaration*

of the receipt of said payments required to be made by the plaintiff. The Commissioner of Internal Revenue in determining the tax liability of the plaintiff for the year of 1931, and in assessing and collecting the said tax and interest as aforesaid, refused to allow deductions for the above mentioned amounts of \$567,648. and \$80,063.56, a total of \$647,711.56, paid by the plaintiff to the said Delaware Realty and Investment Company. The determination, assessment and collection of said tax and the collection of interest thereon as aforesaid, was contrary to and in violation of, and was not authorized by the laws of the United States, and particularly the Revenue Act of 1928.

That by reason of the facts aforesaid, there was at the time of bringing this suit, and is now due from defendant to plaintiff, the sum of \$172,351.64, with interest thereon from September 24, 1935, at the rate of six per centum (6%) per annum; and being so indebted as aforesaid, defendant in consideration thereof, afterwards, to-wit on the day and year last aforesaid, in the District of Delaware, undertook, and then and there promised plaintiff to pay him the said last mentioned sum of money, with interest as aforesaid, when defendant should be thereunto afterwards requested; that nevertheless, defendant, not regarding his several promises and undertakings, has not yet paid said sum of money, or any part thereof, to plaintiff, although often requested so to do, but hath hitherto wholly neglected and refused, and still does neglect and refuse, to pay the same, or any part thereof; wherefore, the plaintiff saith that he is injured and hath sustained damages in the sum of ~~THREE~~ HUNDRED THOUSAND DOLLARS (\$300,000.) and therefore he brings his suit.

(2) AND FOR THAT WHEREAS, afterwards, to-wit, on the day and year aforesaid, in the District of Delaware, aforesaid, defendant was indebted to the plaintiff in the sum of

*Declaration*

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THREE HUNDRED THOUSAND DOLLARS (\$300,000.) for so much money by defendant before that time had and received, to and for the use of plaintiff, and being so indebted, the defendant in consideration thereof as aforesaid, to-wit, on the day and year last aforesaid, in the District of Delaware as aforesaid, undertook and then and there promised the plaintiff to pay him the said last mentioned sum of money, with interest as aforesaid, when defendant should be thereunto afterwards requested; nevertheless, defendant not regarding his said promises and undertaking, hath not yet paid said sum of money, or any part thereof to plaintiff, although often requested so to do, but hath hitherto wholly neglected and refused, and still does neglect and refuse to pay the same; Wherefore, the plaintiff saith that he is injured and hath sustained damages in the amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000.) and therefore he brings his suit.

(Sgd.) RICHARDS, LAYTON & FINGER,  
*Attornecys for the Plaintiff.*

IVINS, PHILLIPS, GRAVES AND BARKER,  
*Counsel,*

Southern Building  
Washington, D. C.

**BILL OF PARTICULARS.**

**WILLARD F. DEPUTY, Collector of  
Internal Revenue for the  
District of Delaware**

—to—

**PIERRE S. DUPONT, Dr.**

**To amounts illegally collected from Pierre S. duPont as income taxes and interest thereon for the calendar year 1931, as follows:**

<b>Amount assessed as additional income tax for the calendar year 1931</b>	<b>\$142,466.79</b>
<b>Amount assessed as interest on said additional income tax</b>	<b>29,884.85</b>

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<b>Total</b>	<b>\$172,351.64</b>
--------------	---------------------

**Interest on said total from September 24, 1935, on which date payment was made under protest,**

**\$**

**[Certain paragraphs and exhibits of the complaint are omitted as irrelevant to the issue on appeal having been disposed of by Stipulation No. 1 filed at the trial.]**

**DEFENDANT'S PLEAS.**

(Filed December 11, 1936.)

Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, the above-named defendant, by John J. Morris, Jr., United States Attorney for the District of Delaware, his attorney, files the following pleas to each of the counts in the plaintiff's declaration filed in this cause:

1. Non Assumpsit.
2. Payment.
3. Release.
4. Statute of Limitations.

(Sgd.) JOHN J. MORRIS, JR.,  
*United States Attorney for the  
District of Delaware.*

**BILL OF EXCEPTIONS.**

(Filed May 19, 1938.)

BE IT REMEMBERED that the above entitled case came on for trial at a stated term of the District Court of the United States for the District of Delaware on March 22, 1937, before the Honorable John Biggs, Jr., United States Circuit Judge, assigned to hold the District Court of the United States for the District of Delaware, without a jury, a jury having been duly waived by the parties by a written stipulation.

WHEREUPON the parties offered and introduced the following stipulations, with the exhibits thereto attached, to wit:

**STIPULATION.**

(Filed March 22, 1937.)

It is hereby stipulated and agreed by and between the parties hereto through their respective attorneys of record as follows:

1. That this stipulation is for the purpose of and applicable to this proceeding only.

2. That this stipulation is intended to effect and constitute a complete settlement and adjustment of all matters and issues set forth in the complaint with the exception of the issue relating to the plaintiff's claim for the allowance of a deduction in computing his Federal income tax for the year 1931 of the amounts alleged in the complaint to have been paid by him to Delaware Realty & Investment Company during the year 1931.

3. That if the Court should determine that the plaintiff in computing taxable net income for the year 1931 is entitled to deduct the payments alleged in the complaint to have been made to Delaware Realty & Investment Company, then the Court may enter judgment for the plaintiff in the sum of \$172,351.64 with interest thereon from September 24, 1935.

4. That if the Court should determine that the plaintiff in computing taxable net income for the year 1931 is not entitled to deduct the payments alleged in the complaint to have been made to Delaware Realty & Investment Company, then, nevertheless, the Court, for the purposes of carrying into effect the terms of this agreed settlement of the other issues set forth in the said complaint, may enter judgment for the plaintiff in the sum of \$54,439.52 with interest thereon from September 24, 1935.

5. That the Court in entering its judgment in this cause may include therein a statement that such judgment, to the extent indicated in this agreement, carries into effect this agreed settlement of all issues other than that relating to

the plaintiff's claim for a deduction of the amounts alleged in the complaint to have been paid to Delaware Realty & Investment Company; and that the Court may further incorporate this stipulation by reference in the terms of its judgment in this cause.

6. That this stipulation is without prejudice to the position which has been or may be taken by either party hereto in pending or future negotiations or litigation with respect to the Federal income tax liability of this plaintiff for any year other than 1931.

7. That this stipulation is not to be construed as an admission by either party of the truth or falsity of any of the allegations of fact set forth in the complaint herein; and that the judgment of the Court in this cause, in so far as it is attributable solely to the terms of this stipulation, shall not be considered as a determination of the truth or falsity of any of the allegations of fact set forth in the complaint.

8. That neither this stipulation, nor the judgment of the Court herein in so far as the same may be based upon this stipulation, may be offered by either party or received in evidence in any case involving the Federal income tax liability of this plaintiff for any year other than 1931.

9. That either party may introduce such legally admissible evidence as may be necessary, advisable and proper with respect to the issue relating to the plaintiff's claim of a deduction for the year 1931 on account of the payments alleged in the complaint to have been made to Delaware Realty & Investment Company; and that in respect to such issue this cause may proceed to final determination as though this stipulation had never been filed.

(Sgd.) RICHARDS, LAYTON & FINGER,  
*Attorneys for Plaintiff.*

(Sgd.) JOHN J. MORRIS, JR.,  
*Attorney for Defendant.*

(Sgd.) LESTER L. GIBSON.

*Stipulation of Facts***STIPULATION OF FACTS.**

(Filed March 22, 1937.)

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that for the purposes of this proceeding only, the following facts may be taken as true and exhibits referred to herein may be given the same force and effect as if the same had been duly authenticated and offered in open court, subject, however, to the rights of either party to object to any part of the said stipulation or to any of the said exhibits on the ground of irrelevancy or immateriality. It is further agreed that this stipulation is without prejudice to the right of either party to offer at the hearing of this cause other evidence not inconsistent with this stipulation.

**I.**

Pierre S. du Pont, plaintiff herein, is, and at the time this action was instituted was, a resident of Wilmington, Delaware, and on March 15, 1932, filed his Federal income tax return for the calendar year 1931 with the Collector of Internal Revenue at Wilmington, Delaware. A copy of the said return is hereto attached and made a part hereof, marked Exhibit A.

**II.**

The defendant, Willard F. Deputy, is, and since September, 1933, has been, the United States Collector of Internal Revenue for the District of Delaware.

**III.**

In or about the month of September, 1935, the Commissioner of Internal Revenue of the United States determined a deficiency in income tax for the calendar year 1931 in the amount of \$142,466.79, whereupon the plaintiff filed a waiver of his right to appeal to the United States Board of Tax Appeals and consented to the immediate assessment of the

deficiency; the Commissioner then assessed the said deficiency together with interest in the amount of \$29,884.85, all of which the plaintiff paid to the defendant on September 24, 1935, in a total sum of \$172,351.64.

IV.

On March 2, 1936, plaintiff filed with the defendant a claim for refund of the amount of \$142,466.79 and \$29,884.85 paid as aforesaid. A copy of the said claim for refund is attached hereto and made a part hereof, marked Exhibit B.

V.

Pursuant to a resolution duly adopted by the directors of the Christiana Securities Company and recorded amongst the minutes of a special meeting of the Board of Directors of the Christiana Securities Company held at the office of that company on the twelfth day of December, 1919, a copy of which minutes is hereto attached and made a part hereof, marked Exhibit C, on December 23, 1919 the Christiana Securities Company and the plaintiff entered into a written agreement, a copy of which is hereto attached and made a part hereof, marked Exhibit D.

VI.

Attached hereto and made a part hereof, marked Exhibit E, is a copy of the Treasurer's report dated December 11, 1919, and referred to in the aforesaid minutes marked Exhibit C.

VII.

The aforesaid agreement between the plaintiff and the Christiana Securities Company, Exhibit D, was thereafter supplemented by four certain agreements, as follows: An agreement dated January 4, 1923, a copy of which is attached hereto and made a part hereof, marked Exhibit F; an agreement dated August 12, 1925, a copy of which is hereto attached and made a part hereof, marked Exhibit G; an agreement dated October 28, 1926, a copy of which is

*Stipulation of Facts*

attached hereto and made a part hereof, marked Exhibit H; an agreement dated January 21, 1929, a copy of which is attached hereto and made a part hereof, marked Exhibit I.

**VIII.**

On December 22, 1919, Irene du Pont, president, made a report to the Finance Committee of the E. I. du Pont de Nemours and Company, of which report a copy is hereto attached and made a part hereof, marked Exhibit J.

**IX.**

Attached to this stipulation and made a part hereof, marked Exhibit K, is a copy of the minutes of meeting No. 163 (special meeting) of the Finance Committee of the E. I. du Pont de Nemours and Company, duly adopted at a meeting held December 24, 1919.

**X.**

Pursuant to the resolution of the Finance Committee herein referred to as Exhibit K, the E. I. du Pont de Nemours and Company during the month of December, 1919, entered into two contracts with each of the following-named persons:

Lammot du Pont  
F. D. Brown  
W. S. Carpenter, Jr.  
A. Felix du Pont  
J. B. D. Edge

C. A. Meade  
C. A. Patterson  
W. F. Pickard  
W. C. Spruance

the terms of the said contracts, respectively, being the terms of the contracts authorized by the said resolution of the Finance Committee.

**XI.**

Pursuant to the agreement between the plaintiff and the Christiana Securities Company dated December 23, 1919, a copy of which is hereto annexed, marked Exhibit D, the plaintiff received from the Christiana Securities Com-

pany 9000 shares of common stock of E. I. du Pont de Nemours and Company. Thereafter, in the month of December, 1919, the plaintiff, pursuant to the plan contemplated by the aforesaid contracts, sold and delivered 1000 shares of the common stock of the E. I. du Pont de Nemours and Company so received by him from the Christiana Securities Company to each of the nine following-named persons, who constituted the Executive Committee of the E. I. du Pont de Nemours and Company:

Lamot du Pont  
F. D. Brown  
W. S. Carpenter, Jr.  
A. Felix du Pont  
J. B. D. Edge

C. A. Meade  
C. A. Patterson  
W. F. Pickard  
W. C. Spruance

All of these sales were made at a price of \$320.00 per share. Attached hereto and marked Exhibit L is a communication addressed to each of the above named individuals by Irene du Pont, president of said company, to which is attached the computations upon the basis of which plaintiff fixed the price of \$320.00 per share for said stock. At the time these sales were made by the plaintiff, the common stock of the E. I. du Pont de Nemours the Company was not listed on any stock exchange. Such stock was bought and sold by Laird & Company, a local Wilmington, Delaware, brokerage firm. The purchases and sales of such stock by Laird & Company for the period December 1, 1919 to July 2, 1920 are shown in copies of the ledger sheets of that company attached hereto and marked Exhibit M.

## XII.

Throughout the month of December, 1919, the plaintiff owned seventy-four shares of the common stock of the E. I. du Pont de Nemours and Company. On November 30, 1918, plaintiff executed a trust instrument for the benefit of Chester County Hospital, a copy of which is attached as Exhibit N. This trust agreement was supplemented by an instrument executed on September 26, 1919, a copy of

which is attached as Exhibit O, and as so supplemented was in effect during the month of December, 1919. On July 29, 1919, plaintiff executed a trust instrument for the benefit of Delaware School Auxiliary Association, a copy of which is attached hereto as Exhibit P. This trust agreement was also in effect during the month of December, 1919. Throughout the month of December, 1919, the authorized common stock of the E. I. du Pont de Nemours and Company was 800,000 shares, of which 588,542 were issued and outstanding.

### XIII.

Throughout the month of December, 1919, the plaintiff owned 29,125 shares of the common stock of the Christiana Securities Company and was president and a director of that corporation. The Christiana Securities Company was a Delaware corporation organized during the year 1915, and throughout the month of December, 1919, had, issued and outstanding, 75,000 shares of its common stock. The said 75,000 shares were the total authorized capital stock of the said corporation. The Christiana Securities Company was the owner of 183,000 shares of the common stock of E. I. du Pont de Nemours and Company immediately previous to the loan of 9,000 shares to the plaintiff on December 23, 1919.

### XIV.

On March 10, 1921, Irene du Pont wrote and mailed or delivered a letter to the plaintiff, a copy of which is attached as Exhibit Q. On April 1, 1921, the plaintiff wrote and mailed separate letters to Lamot du Pont, F. D. Brown, W. S. Carpenter, Jr., A. Felix du Pont, J. B. D. Edge, C. A. Meade, C. A. Patterson, W. F. Pickard and W. C. Spruance, respectively. A copy of the letter so written and mailed to W. S. Carpenter, Jr., is hereto attached and made a part hereof, marked Exhibit R. The letters written and mailed to the other persons named were identical except for the addressees' names and addresses. These letters were duly received by the respective ad-

dressées. The proposals therein made were accepted by the respective persons addressed and the shares of Christiana Securities Company stock were delivered in accordance with the terms of the agreements so made.

**XV.**

On October 25, 1929, the plaintiff entered into an agreement with the Delaware Realty and Investment Company, a corporation, a copy of which agreement is attached hereto and made a part hereof, marked Exhibit S. The 142,212 shares of E. I. du Pont de Nemours and Company stock mentioned in the said agreement were received by the said plaintiff pursuant to the said contract, and were by him delivered to the Christiana Securities Company.

**XVI.**

During the year 1929 the plaintiff returned 300 shares of the common stock of E. I. du Pont de Nemours and Company to the Delaware Realty and Investment Company, thus reducing his obligation to that company to 141,912 shares. During the year 1931 the E. I. du Pont de Nemours and Company paid dividends on its common stock amounting to \$4.00 per share and in accordance with the agreement with the Delaware Realty and Investment Company dated October 25, 1929 (Exhibit S), the plaintiff paid to the said company a sum of \$567,648.00, which was an amount equal to the dividends declared and paid upon the stock borrowed under said agreement and not returned.

**XVII.**

During the calendar year 1931 the plaintiff paid to the Delaware Realty and Investment Company, in accordance with the terms of his agreement with said company dated October 25, 1929 (Exhibit S), the amount of \$80,063.56, being an amount equal to Federal income taxes asserted against and paid by the said Delaware Realty and Investment Company for the calendar year 1930 on account of the receipt by the Delaware Realty and Investment Company

from the plaintiff in that year of payments made by the plaintiff under said agreement of October 25, 1929 (Exhibit S). In 1933 the Commissioner of Internal Revenue determined that said \$80,063.56 paid by plaintiff to the Delaware Realty and Investment Company in 1931 was income to said company in that year, and that an additional tax was due thereon. The plaintiff was called upon to and did in 1933 reimburse said company on account of said additional tax in the amount of \$9,607.98 together with interest thereon in the amount of \$663.98, a total of \$10,271.60.

## XVIII.

On his return for the calendar year 1931 (Exhibit A) the plaintiff claimed and took as a deduction from gross income on line 13, under the heading "Interest Paid", the sum of \$567,648, being the sum mentioned in paragraph XVI of this Stipulation. The said plaintiff did not claim or take as a deduction from gross income on his said return the sum of \$80,063.56, being the amount mentioned in paragraph XVII of this stipulation. The Commissioner of Internal Revenue in determining the tax liability of the plaintiff for the calendar year 1931 and in assessing and collecting the deficiency in tax of \$142,466.79 and interest thereon of \$29,884.85, refused to allow as deductions the above-mentioned amounts of \$567,648.00 and \$80,063.56, a total of \$647,711.56, paid by the plaintiff to the Delaware Realty and Investment Company.

## XIX.

The plaintiff made his return and kept his books for the calendar year 1931 on a cash receipts and disbursements basis.

(Sgd.) RICHARDS, LAYTON & FINGER

(Sgd.) JAMES S. Y. IVINS,

*Attorneys for Plaintiff.*

(Sgd.) JOHN J. MORRIS, JR.

(Sgd.) LESTER L. GIBSON

*Attorneys for Defendant.*



INCOME		Amount received	Taxpayer paid (check or indicate %)
1. Salaries, Wages, Commissions, etc. (State name and address of employer)		\$	\$ 20,640.78 ✓
2. Income from Business or Profession. (From Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			336,748.05 ✓
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
5. Income from Partnerships. (State name and address)			
6. Income from Fiduciaries. (State name and address)			
7. Rents and Royalties. (From Schedule E)			4,876.00 ✓
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule D)			(950,982.21) ✓
9. Taxable Interest on Liberty Bonds, etc. (From Schedule E)			
10. Dividends on Stock in Domestic Corporations			1,475,046.54 ✓
11. Other Income (including dividends on stock of foreign corporations). (State nature of income)			

6. Income from Fiduciaries. (State name and address)

7. Rents and Royalties. (See Schedule B)

8. Federal Income Tax of Trust Estate, Estate, Bank, etc. (See Schedule C)

9. Taxable Interest in Liberty Bonds, etc. (See Schedule D)

10. Dividends on Stock in Domestic Corporations

11. Other Income (including dividends on stock of foreign corporations). (See Schedule E)

(a)

(b)

12. TOTAL INCOME IN ITEMS 1 TO 11

### DEDUCTIONS

13. Interest Paid

1. Taxes Paid. (Explain in Schedule F)

Losses by Fire, Storm, etc. (Explain in Table at end of page 2)

Bad Debts. (Explain in Schedule F)

Contributions. (Explain in Schedule F)

Other Deductions Authorized by Law. (Explain in Schedule F)

TOTAL DEDUCTIONS IN ITEMS 13 TO 18

Net Income (Item 12 minus Item 19)

### EARNED INCOME CREDIT

### COMPUTATION OF TAX (See Instruction 22)

Net Income (not over \$20,000)	1	22. Net Income (Item 20 above)	18,330.31	44. Normal Tax (13 1/2% of Item 43)	
Personal Exemption and credit for Dependents		23. Liberty Bond Interest (Item 9)	2,506.52	45. Normal Tax (5% of Item 43)	
Net Income (Item 21 minus 22)	2	24. Dividends (Item 10)		46. Normal Tax (5% of Item 43)	
Not taxable at 13 1/2% (not over \$20,000)	3	25. Credit for Dependents		47. Surplus on Item 20 (see Instruction 22)	9,791.35
Not taxable at 5% (not over \$20,000)	4	26. Personal Exemption		48. Tax on Net Income (total of Items 44 to 47)	
Amount taxable at 5% (balance over \$20,000 of Item 23)	5	27. Total of Items 24 to 27	4,206.56	49. Tax on Capital Gains or Loss (13 1/2% of Col. 2, Schedule D)	14,178.63
26. Amount taxable at 5% (balance over \$20,000 of Item 23)		28. Balance (Item 28 minus 29)	0.00	50. Total of or difference between Items 48 and 49	0.00
27. Normal Tax (13 1/2% of Item 24)		29. Amount taxable at 13 1/2% (not over \$4,000)		51. Less Credit of 20% of Tax on Earned Income (Item 52)	0.00
28. Normal Tax (5% of Item 25)		30. Balance (Item 30 minus 31)		52. Total Tax (Item 50 minus 51)	0.00
29. Normal Tax (5% of Item 26)		31. Amount taxable at 5% (not over \$4,000)		53. Less Income Tax Paid at Source	
30. Surplus on Item 21		32. Amount taxable at 5% (Item 41 minus 42)		54. Income Tax paid to a foreign country or U. S. possession	
31. Tax on Earned Net Income (total of Items 27 to 30)				55. Balance of Tax (Item 52 minus Items 53 and 54)	0.00
32. Credit of 20% of Tax (not over 25% of Items 30, 44, 45, and 46)					

### AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1926 and the Regulations issued thereunder.

See Instruction 27

Sworn to and subscribed before me this 1st day of March, 1927

NOTARIAL SEAL

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable to pay

**SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instructions 2)**

1. Total receipts from business or profession (state kind of business)		2. Gross income		3. Gross income	
Cost of Goods Sold		4. Labor		5. Material and supplies	
2. Labor		6. Merchandise bought for sale		7. Other costs (list below or on separate sheet)	
3. Material and supplies		8. Inventory at beginning of year		9. Total (Lines 2 to 6)	
4. Merchandise bought for sale		10. Inventory at end of year		11. Net Cost of Goods Sold (Line 9 minus Line 10)	
5. Other costs (list below or on separate sheet)		12. Enter "C," "O" or "M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.			
6. Inventory at beginning of year		13. Total Deductions (Line 10 plus Line 11)			
7. Total (Lines 2 to 6)		14. Net Profit (Line 1 minus Line 13) (Enter on Form 10)			
8. Inventory at end of year					
9. Net Cost of Goods Sold (Line 7 minus Line 8)					

Explanation of deductions claimed on Lines 5 and 10.

**SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)**

1. Name of Property	2. Amount Received	3. Cost or Value as or March 1, 1913	4. Depreciation (check in table at foot of page)	5. Net Income	6. Other Income (check in table at foot of page)	7. Net Profit (check in table at foot of page)

Explanation of deductions claimed in Column 6.

**SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)**

1. Name of Property	2. Date Acquired	3. Amount Received	4. Cost or Value as or March 1, 1913	5. Net Profit	6. Other Income (check in table at foot of page)	7. Net Profit (check in table at foot of page)

See how property was acquired.

**SCHEDULE D—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instructions 9)**

1. Description of Securities	2. Interest Received or Accrued	3. Amount Owed	4. Face Value	5. Interest Rate	6. Maturity Date	7. Name of Issuer
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia						
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness						
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions						
(d) Liberty 4% and 4½% Bonds, Treasury Bonds, and Treasury Savings Certificates						
(e) Treasury Notes						

**SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18**

1. Kind of Property	2. Date Acquired	3. Amount Realized	4. Available Excess Exclusion	5. Of Marital & Non-Marital Property	6. Excess Exclusion	7. Tax Paid (Enter on Form 1041)

**SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES**

1. OBLIGATIONS OR SECURITIES	2. INTEREST RECEIVED OR ANTICIPATED	3. AMOUNT OWNED	4. TYPE OF SECURITY	5. NUMBER OF SHARES OR BONDS	6. AMOUNT OF INVESTMENT OR INTEREST
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			AM	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness			AM	XXXXXX	XXXXXX
Liberty 3 1/4 % Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U.S. possessions			AM	XXXXXX	XXXXXX
Liberty 4 % and 4 1/4 % Bonds, Treasury Bonds, and Treasury Savings Certificates			AM	XXXXXX	XXXXXX
(c) Treasury Notes			AM	XXXXXX	XXXXXX

**SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 2, 14, 16, 17, AND 18****EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND E**

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST OR VALUE AS OF MARCH 1, 1913, Whichever Greater (Include value of Land)	AMOUNT OF DEPRECIATION CHARGES ON	
					6. Previous years	7. This year

## EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 26

[illegible]

Year 1931

PROFIT & LOSS - SECURITY TRANSACTIONS

Schedule c-8

	<u>Date</u> <u>Acquired</u>	<u>Cost</u>	<u>Proceeds</u>	<u>Profit</u> <u>and Loss</u>
2,300 Warner Bros. 1000 -6/17/30 Pic. Inc.....1000 -8/27/30 300 -9/30/30		\$77,374.50	\$ 44,045.50	\$ 33,329.00
5,500 Checker Cab Mfg. Company..... 5/6/31		55,000.00 ✓	54,312.50 ✓	687.50
2,000 Warner Bros. Pic. Inc..... 1/27/30		1,010,000.00	384,287.50	625,712.50
3,150 United State Rub. Co. Pfd..... 11/14/29 6/23/31		98,951.25	40,430.25	58,521.00
6,250 Sims Petroleum Co. 10/24/30		153,123.75	37,500.00	115,623.75
1,400 Baltimore & Ohio Railroad Company 6/17/30		138,202.00	20,397.13	117,804.87
101 General Motors Corp Common..... 6/30/31		3,314.82	2,323.00	991.82
88 Christiansa Securities Co., Preferred.. 10/2/31		10,208.00	9,680.80	527.20
441 General Motors Corp Common- Short 3/19/30 2/11/31		19,034.28	19,616.84	582.56
13,615 Corden Oil Company 5/6/31		13,615.00 ✓	15,316.27 ✓	1,701.27
500 Warner Bros. Pic Inc 5/6/31		4,000.00 ✓	4,125.00	125.00
		<u>\$ 1,582,823.60</u>	<u>\$632,035.39</u>	<u>\$ 950,788.21</u>

FEDERALTAXES

14 - F

Customs Duties.....	\$ 600.91
Stock Transfers.....	2,427.46
State of Delaware.....	56,752.92
Real Estate.....	<u>33,348.37</u> ✓
Total.....	\$93,129.66

OTHER DEDUCTIONS

18-1

FARM OPERATIONSEarningsExpensesNet

Fields.....	\$ 7,522.42	\$ 13,729.57	\$ 6,200.15
Livestock.....	37,298.90	35,874.96	1,423.94
Orchards.....	2,206.88	2,798.55	591.67
Vegetable Gardens.....	46.70	27.72	18.98
Sales of Products.....	---	1,286.19	1,286.19
Totals.....	\$ 47,081.90	\$ 53,716.99	\$ 6,635.09 (Lost)

OTHER FARM OPERATIONS..... \$ 23,251.17 ?

Total Farm Expenses.....	\$ 76,968.16
Less: Gross Earnings.....	47,081.90

Total Loss.....	\$ 29,886.26
Less: 20% Personal Farm Expenses.....	5,977.26

TOTAL LOSS..... \$ 29,031.50

TENANT HOUSES EXPENSES..... 9,616.05WASHINGTON STATE PROPERTY EXPENSES..... 3,671.34GENERAL OFFICE EXPENSES:

Salaries.....	\$ 10,682.17	
Office Expenses.....	2,033.09	
Stationery.....	734.77	
Postage.....	481.31	
Discount on Invoices.....	870.25	
	13,061.09	3,265.25

MAINTENANCE EXPENSES..... 39,341.93 7,668.38ROADS..... 2,786.60

Total..... \$ 56,239.21 ✓

OTHER DEDUCTIONS

18-F

SALARY & ADMINISTRATIVE

Hotels, Clubs & Restaurants.....	\$ 1,413.64
Legal, Auditing & Accounting.....	9,005.98
Miscellaneous Office Expenses.....	3,498.00
Salaries - Wilmington Office.....	11,959.45
Salaries - New York Office.....	537.60
Apartment - New York.....	2,520.00 - 11.22
Office Rent - New York.....	2,576.00
Office Rent - Wilmington.....	<u>4,800.00</u>
Total.....	\$ 36,310.67

# CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☒ REFUND OF TAX ILLEGALLY COLLECTED.  
☐ REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN EXCESS OF EXEMPT.  
☐ ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

COLLECTOR'S STAMP  
 (Date received)  
 RECEIVED  
 MAR 5 1936  
 DISTRICT OF DELAWARE

RECEIVED  
 MAR 5 1936  
 CLAY'S CONTROL  
 SECTION

STATE OF Delaware  
 COUNTY OF New Castle

Name of taxpayer or purchaser of stamps Pierre S. du Pont  
 Business address du Pont Building, Wilmington, Delaware  
 Residence \_\_\_\_\_

TYPE  
 OR  
 PRINT

- The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:
1. District in which return (if any) was filed Delaware
  2. Period (if for income tax, make separate form for each taxable year) from January 1, 1931 to December 31, 1931.
  3. Character of assessment or tax Income tax
  4. Amount of assessment, \$142,466.79 tax and \$29,884.85 interest. September 24, 1935.
  5. Date stamps were purchased from the Government \_\_\_\_\_
  6. Amount to be refunded Interest of \$29,884.85 and tax of \$172,351.64
  7. Amount to be abated (not applicable to income or estate taxes) \_\_\_\_\_
  8. The time within which this claim may be legally filed expires, under Section \_\_\_\_\_ of the Revenue Act of 19 \_\_\_\_\_

The deponent verily believes that this claim should be allowed for the following reasons:

See annexed sheets numbered  
 one to eight.

BUREAU OF  
 INTERNAL REVENUE  
 MAIL ROOM  
 1935 MAR 5 AM 9 12

Subscribed and sworn to before me this 27th day of February, 1936.  
J. H. Bassett Notary Public  
 (Signature of Notary Public)

## 21

4

**Claim No.**

**Total**

*Shirley D. Jones*  
Collector of Internal Revenue



Amount retained. \$.....

7

- 2.2. EXPERIMENTAL MATERIALS AND METHODS**



In his determination of the taxable income of the deponent, as set out in Bureau letter dated September 11, 1935, the Commissioner committed the errors set out below.

I. The Commissioner incorrectly determined the loss sustained by deponent upon the sale of 20,000 shares of the stock of Warner Brothers Pictures.

(a) The Commissioner incorrectly determined the cost of such stock to be \$798,285.

On February 24, 1931, deponent sold short 20,000 shares of the common stock of Warner Brothers Pictures for \$384,287.50. On June 9, 1931 this sale was covered by the delivery of 20,000 shares of such stock acquired by deponent under the following circumstances:

On January 27, 1930, deponent purchased 40,000 shares of the stock of Warner Brothers Pictures at a cost of \$2,020,000. On April 2, 1930 deponent transferred such stock, together with other securities, to H. Rodney Sharp as trustee, to be held by him under the terms of a declaration of trust executed by him on the same date, a copy of which is hereto annexed, marked Exhibit A. A copy of the certificate of incorporation of Welfare Foundation, Inc., the beneficiary of such trust, is hereto annexed, marked Exhibit B.

Upon the creation of said trust, the beneficiary thereof entered into contracts to construct public schools, basing its commitments upon an estimate of the income to be received from said trust. Shortly thereafter, due to economic conditions, the income from the trust securities decreased in amount, and it soon became evident that the beneficiary of the trust would be financially embarrassed and unable to meet commitments made in connection with public school construction work unless the situation were relieved to some extent.

*Stipulation of Facts*

Upon being advised of the situation of the beneficiary, deponent voluntarily offered to augment the trust income by transferring thereto additional securities. Deponent discussed the matter with the trustee and, after some consideration, finally decided to transfer to the trust five thousand shares of the capital stock of Atlantic Refining Company. Deponent therefore advised the trustee to this effect and directed his secretary to make the necessary transfer, which was done in June of 1931. In June, 1931 the trustee retransferred to deponent discharged from the trust the 40,000 shares of the capital stock of Warner Brothers Pictures, Inc., upon which dividends had ceased.

Twenty thousand shares of the stock of Warner Brothers Pictures, Inc., so returned to the deponent by the trustee, were delivered by deponent to his broker to cover the short sale of February 24, 1931. Said stock had cost deponent \$1,010,000 and upon his tax return deponent claimed a deduction of \$625,712.50, representing the difference between said cost and the selling price thereof, viz., \$384,287.50.

In letter dated September 11, 1935, the Commissioner of Internal Revenue determined the cost basis of such 20,000 shares of Warner Brothers Pictures, Inc., so sold by deponent as aforesaid, to be \$798,285. In refusing to recognize the correct cost of \$1,010,000 the Commissioner committed error.

(b) The Commissioner incorrectly determined that 4/5ths of the loss on the sale of Warner Brothers Pictures represented a loss sustained on the sale of securities held for a period in excess of two years and was to be accounted for as a capital loss.

The error on the part of the Commissioner as set out in his letter of September 11, 1935, seems to arise from a confusion of Warner Brothers Pictures stock with Atlantic Refining Company stock. Four-fifths of

the Atlantic Refining Company stock was held for over two years, but that fact would not have any effect upon the gain or loss from the sale or exchange of the stock of Warner Brothers Pictures, Inc.

The Commissioner determined the cost of Warner Brothers Pictures stock to be \$798,285 upon the following basis: The market value of 5,000 shares of stock of Atlantic Refining Company delivered to H. Rodney Sharp, as trustee, was \$61,875 at the time of such delivery. The fair market value of 9,610 shares of Warner Brothers Pictures stock on the same day was \$61,875. The Commissioner determined that 5,000 shares of stock of Atlantic Refining Company stock were exchanged for 9,610 shares of the stock of Warner Brothers Pictures, and that 30,390 shares of the stock of Warner Brothers Pictures were received from the trustee without consideration, either as a partial termination of the trust and a surrender *pro tanto* of the corpus or as a gift. On that basis the Commissioner determined that the cost to deponent of the 40,000 shares of stock of Warner Brothers Pictures received from the trustee was as follows:

9610 shares received upon an exchange	\$61,875
30,390 shares received without consideration	\$1,534,675
Cost basis, 40,000 shares	\$1,596,570

The Commissioner therefore determined the cost basis of 20,000 shares of such stock as \$798,285, the sales price to be \$384,287.50, and the loss to be \$413,997.50. Deponent does not agree with this computation of loss, contending that no exchange was involved and that the cost was \$1,010,000 as set out in (a) above.

Whether or not the Commissioner has correctly determined the cost basis of such stock, all of such stock was held for less than two years.

*Stipulation of Facts*

II. The Commissioner erroneously failed to allow an loss upon the disposition of 5,000 shares of stock of Atlantic Refining Company.

It is the position of the deponent, as set out in (a) above, that 20,000 shares of the stock of Warner Brothers Pictures was returned to him without consideration and that 5,000 shares of Atlantic Refining Company stock was delivered to H. Rodney Sharp as trustee without consideration. The Commissioner, however, has determined that 5,000 shares of stock of Atlantic Refining Company was exchanged for 9,610 shares of stock of Warner Brothers Pictures. If the Commissioner's position is correct, gain or loss was realized upon this disposition of the stock of Atlantic Refining Company as follows:

1,000 shares of Atlantic Refining Co.  
held less than two years:

Amount received, 1/5th of \$61,850  
Cost

\$12,375  
39,150

Ordinary loss

\$26,775

4,000 shares of Atlantic Refining Co.  
held more than two years:

Amount received, 4/5ths of \$61,850  
Cost

\$49,480.00  
\$211,394.30

Capital net loss

\$161,914.30

Giving effect to the basis used by the Commissioner in determining that there was an exchange of 5,000 shares of Atlantic Refining Co. for 9,610 shares of Warner Brothers Pictures, (a) and (b) above, and without giving effect to any other grounds urged by the deponent, the computation of tax liability would be as follows:

# *Stipulation of Facts*

37

Ordinary net income, office letter dated  
September 11, 1935

\$1,049,681.72

Add:

Contributions adjustment

28,303.55

\$1,077,985.27

Less:

Ordinary loss on sale  
of Warner Brothers  
Pictures, erroneously  
treated as capital loss \$331,198.00

Ordinary loss on sale  
of 1,000 Atlantic Re-  
fining Company 26,776.00

357,974.00

Ordinary net income, revised

\$720,011.27

Capital net loss, office letter dated  
September 11, 1935

\$444,628.63

Less:

Ordinary loss erroneously allowed as  
capital loss

331,198.00

\$113,430.63

Add:

4,000 Atlantic Refining Co. sold at  
capital loss of

161,914.34

Capital net loss, revised

\$275,344.97

Ordinary net income

\$720,011.27

Less:

Dividends

\$1,449,288.67

Subject to normal tax

None

Surtax on \$720,011.27

\$135,662.25

Less:

12½% of capital net loss of  
\$275,344.97

34,418.12

\$101,244.13

Less:

Earned Income Credit \$10.97

Income tax paid at source \$3,540.00

3,550.97

Adjusted tax

\$97,693.14

The computation of tax of \$142,466.79 set out in the Bureau letter of September 11, 1935 represented an erroneous computation. The correct computation giving effect to the adjustments in income in accordance with the ruling made by the Commissioner is as set out above.

III. In computing taxable income the Commissioner of Internal Revenue erroneously failed to allow a deduction of \$647,711.56 paid by deponent to Delaware Realty and Investment Company upon account of stock borrowed from that company.

Prior to the year 1931 deponent borrowed certain shares of stock of E. I. du Pont de Nemours & Company from Delaware Realty and Investment Company. Deponent agreed with the lender that he would pay to it the dividends declared and paid on the borrowed stock, together with any taxes which might be asserted against the Delaware Realty and Investment Company upon account of the receipt of such payments. During the year 1931 deponent paid to Delaware Realty and Investment Company, pursuant to such agreement, \$567,648.00 representing an amount equal to the dividends declared and paid upon the borrowed stock, together with an amount of \$80,063.56 representing an amount equal to the taxes asserted against Delaware Realty and Investment Company upon account of the receipt of the amount equal to such dividends. In the computation of the taxable net income of deponent, as set out in Bureau letter of September 11, 1935, and upon which tax of \$142,466.79 was assessed, no deduction was allowed by the Commissioner of Internal Revenue upon account of such payments to Delaware Realty and Investment Company. The amounts so paid to Delaware Realty and Investment Company were properly deductible from the gross income of the deponent.

IV. The Commissioner erroneously determined a taxable gain realized upon the sale of 6,250 shares of Simms Petroleum Company stock.

In 1930 deponent received from a syndicate of which he had been a member 50,000 shares of the stock of Simms

Petroleum Company. In 1931 deponent sold 6,250 shares of such stock. Upon his income tax return deponent showed the cost of such 6,250 shares of stock to be \$153,123.75. By Bureau letter dated October 4, 1934, this cost was increased by \$24,754.62. No further adjustment was made in Bureau letter of September 11, 1935 upon the basis of which the tax here in controversy was assessed. Subsequent to the issue of Bureau letter of September 11, 1935, the Commissioner of Internal Revenue, in a proceeding with respect to the 1929 tax liability of deponent pending before the United States Board of Tax Appeals, asserted a liability against deponent from the operation of the syndicate which, if correct, increases the cost base of the stock sold in 1931 to \$237,549.40. Deponent asserts that if the position of the Commissioner in the 1929 proceeding should be sustained deponent is entitled to an increased base for computation of the loss sustained upon the disposition of such stock and to a reduction accordingly in his taxable income and tax.

V. Deponent claims the benefit of any and all further adjustments in income for 1931 which may result from any changes or amendments in his income or tax liability for prior years, either as the result of any determination by the Commissioner of Internal Revenue, the Board of Tax Appeals, or the courts.

VI. If the position taken by the Commissioner in said 1929 proceeding, with respect to the losses claimed by deponent for the year 1929, is sustained, then deponent sustained a net loss in the year 1930 in his business of trading in securities in excess of \$600,000, no part of which said net loss has been allowed by the Commissioner in computing deponent's taxable net income for 1931.

**EXHIBIT "A."**

**CERTIFIED COPY OF  
DEED OF TRUST, DATED APRIL 2, 1930**

**Between**

**H. RODNEY SHARP, TRUSTEE**

**and**

**PIERRE S. DU PONT**

**WHEREAS, PIERRE S. DU PONT, of the City of Wilmington and State of Delaware, desires to provide WELFARE FOUNDATION, INCORPORATED, a corporation of the State of Delaware, with funds to enable it to assist in the erection and to aid and assist in the construction and operation of schools, hospitals, charitable, scientific and religious organizations, and playgrounds, and in the equipment and improvements incident thereto in the forty-eight (48) States and Territories of the United States of America, and the political subdivisions thereof:**

**AND WHEREAS, the undersigned, H. Rodney Sharp, of the City of Wilmington and State of Delaware, has this day received from said Pierre S. du Pont the following described securities, namely:**

**10,000 shares Anaconda Copper Mining Company, Capital Stock**

**10,000 shares Baltimore & Ohio Railroad Company, Common Stock**

**25,000 shares Kennecott Copper Corporation, Capital Stock**

**40,000 shares Warner Brothers Pictures Incorporated, Class "A", Common Stock**

**50,000 shares General Motors Corporation, Common Stock**

**AND WHEREAS, said H. Rodney Sharp at the instance and request of said Pierre S. du Pont has consented to act as Trustee of said shares of stock:**

THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, Rodney Sharp, in consideration of the premises, hereby acknowledge and declare that I am possessed of and shall hold said shares of corporate stocks hereinabove particularly listed, and other securities that may be substituted for said shares of stock as hereinafter provided, and all dividends accrued and to accrue upon the same, IN TRUST, for the following uses, intents and purposes: that is to say:

IN TRUST to collect and receive the dividends accrued and to accrue upon said shares of stock and to pay over said dividends, as and when received, to the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) to Welfare Foundation, Inc., a corporation of the State of Delaware, having its principal office at 9012 du Pont Building, Wilmington, Delaware, (except stock dividends, which shall be deemed a part of the principal of said trust funds); and thereupon, IN FURTHER TRUST, to assign, transfer and deliver to said Pierre S. du Pont, or to his executors, the securities, shares of stock, dividends, profits and sums of money remaining in my hands as such Trustee.

It is hereby expressly understood and provided that I am empowered to exchange said shares of stock hereinabove listed for other securities of a like character, or to sell the same and reinvest the proceeds in other securities, such reinvestment to be subject to all the terms and conditions of this trust, or to borrow money for the objects of this trust and in so doing to pledge said shares of stock as collateral security or such part thereof as may be necessary.

It is hereby further understood and provided that, in the event of my death, disability or refusal to act during the execution of this trust, Frank A. McHugh, of the City of Wilmington and State of Delaware shall assume the trusteeship in my place, with all the powers and subject to all the limitations of this trust; and in the event of the death, disability or refusal to act of the said Frank A. McHugh during the execution of this trust, Henry B. Robertson of the City of Wilmington and State of Delaware shall assume

the trusteeship in his place, with all the powers and subject to all the limitations of this trust.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this second day of April 1930.

Signed and sealed in  
the presence of

Anna M. Baird

(H. Rodney Sharp) (SEAL)

STATE OF DELAWARE }  
NEW CASTLE COUNTY } ss.

BE IT REMEMBERED, That on this 7th day of April 1930, personally came before the subscriber, a Notary Public for the State of Delaware, H. Rodney Sharp, party of this Declaration of Trust, known to me personally to be such and acknowledged the same to be his declaration.

GIVEN under my hand and seal of office, the day and year aforesaid.

(s) J. H. Cassidy  
Notary Public

I certify that the foregoing is a true and correct copy of the original Deed of Trust, dated April 2nd, 1930.

J H CASSIDY  
Notary Public

**EXHIBIT "B."**

**CERTIFICATE OF INCORPORATION**

**OF**

**WELFARE FOUNDATION INCORPORATED**

**FIRST.** The name of this corporation is "Welfare Foundation, Incorporated."

**SECOND.** Its principal office in the State of Delaware is to be located in the duPont Building at Tenth and Market Streets, in the City of Wilmington, and the name and address of its resident agent is Frank A. McHugh, 9012 du Pont Building, Wilmington, Del.

**THIRD.** The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried out, are to do any or all of the things herein mentioned, as fully and to the same extent as natural persons might or could do, viz:

To contribute toward the erection and to aid and assist in the construction and operation of schools, hospitals, charitable, scientific and religious organizations, and playgrounds, and in the equipment and improvements incident thereto in the forty-eight (48) states and territories of the United States of America, and the political sub-divisions thereof.

To join with others in a contract or contracts for the construction, equipment and furnishing, and operation of schools, hospitals, charitable, scientific and religious organizations and playgrounds, whereby the corporation shall undertake and become bound to pay and thereafter shall pay a certain fixed part of the money agreed to be paid under said contract or contracts.

To acquire, hold, purchase, pay for, maintain, operate and endow schools, hospitals, charitable, scientific and religious organizations and playgrounds.

To purchase, lease, exchange or otherwise acquire any lands and buildings in the various States and political sub-

divisions thereof and any estate or interest in any rights connected with any such lands and buildings.

To acquire by gift, subscription or otherwise and to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of capital stock, bonds, or other securities issued by any other corporation or corporations, association or associations; and while the owner of such shares of stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

To contract for and erect buildings and construct roads of every description.

To enter into, make, perform and carry out contracts of every sort and kind with any person, firm, association, corporation, private, public or municipal or a body politic.

To conduct its business in other States and to have one or more offices out of this State and to hold, purchase, mortgage and convey real and personal property out of this State.

**FOURTH.** The corporation shall have no capital stock. The members shall be the incorporators hereof and the persons named by them or by the survivor or survivors of them as their successors.

**FIFTH.** The name and place of residence of each of the incorporators are as follows:—

NAME	RESIDENCE
Henry Belin du Pont	Wilmington, Delaware
J. Simpson Dean,	Wilmington, Delaware.
Frank A. McHugh	Wilmington, Delaware.

**SIXTH.** The existence of this corporation is to be perpetual.

**SEVENTH.** The private property of the trustees shall not be subject to the payment of corporate debts.

**EIGHTH.** The direction and management of the affairs of the corporation, and the control and disposition of the property and funds, shall be vested in a board of trustees,

three in number, to be composed of the following individuals:

Henry Belin du Pont,  
J. Simpson Dean,  
Frank A. McHugh.

Vacancies occurring by death, resignations or otherwise shall be filled by the remaining trustees in such manner as the by-laws shall prescribe.

**NINTH.** The said trustees shall be entitled to take hold and administer any funds or property which may be transferred to the corporation for the purposes and objects hereinbefore enumerated; with full power to adopt a common seal, to appoint officers, whether members of the board of trustees or otherwise, and such employees as may be deemed necessary in carrying on the business of the corporation with full power to adopt by-laws and such rules and regulations as may be necessary to secure the safe and convenient transaction of the business of the corporation; with full power and discretion to deal with and expend any and all funds of the corporation in such manner as in their judgment will best promote the objects hereinbefore set forth; and to have and use all the powers and authority necessary to promote the objects and carry out the purposes hereinbefore set forth.

**TENTH.** That the said corporation may take and hold any additional donations, grants, devises, or bequests which may be made in the further support of the purposes of the said corporation.

**ELEVENTH.** That the services of the trustees of the said corporation shall be gratuitous, but such corporation may provide for the reasonable expenses incurred by trustees in the performance of their duties.

**WE THE UNDERSIGNED**, for the purpose of forming a corporation under the laws of the State of Delaware, do make, record and file this certificate and do certify that the facts

herein stated are true and we have accordingly hereunto set our respective hands and seals this eighth day of April A. D. 1930.

IN The presence of:

Ralph T. Ellis  
M. T. Archer  
V. B. Thorne

Henry B. du Pont  
J. Simpson Dean  
Frank A. McHugh

STATE OF DELAWARE  
NEW CASTLE COUNTY } ss

BE IT REMEMBERED, That on this eighth day of April A. D. 1930, personally came before me, the subscriber, a Notary Public for the State of Delaware, Henry Belin du Pont, J. Simpson Dean and Frank A. McHugh, parties to the foregoing Certificate of Incorporation, known to me personally to be such and severally acknowledged that they signed, sealed and delivered the same as their several voluntary act and deed and that the facts herein stated were truly set forth.

GIVEN under my hand and seal of office, the day and year aforesaid.

J. H. Cassidy  
Notary Public.

STATE OF DELAWARE  
Office of Secretary of State

I, Charles H. Grantland, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Welfare Foundation, Incorporated" as received and filed in this office the ninth day of April A. D. 1930, at 9 o'clock A. M.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal, at Dover, this ninth day of April in the year of our Lord one thousand nine hundred and thirty.

Charles D. Grantland,  
Secretary of State.

**EXHIBIT "C."**

**MINUTES OF SPECIAL MEETING OF  
BOARD OF DIRECTORS  
CHRISTIANA SECURITIES COMPANY**

A special meeting of the Board of Directors was held at the office of the company, Wilmington, Delaware, on the 12th day of December, 1919, at 2 o'clock P.M.

Present: Messrs. Irene du Pont, Lamot du Pont, A. Felix du Pont and J. J. Raskob.

Absent: P. S. du Pont and R. R. M. Carpenter.

The minutes of the previous meeting were read and on motion approved.

A report was received from the Treasurer dated December 11th, 1919 advising that the Finance Committee of E. I. du Pont de Nemours & Company had tentatively approved a plan for interesting the members of its Executive Committee as substantial partners in the corporation, which plan requires 9000 shares of common stock; that it is not possible to purchase said stock in the market except at what would perhaps be considered exorbitant prices and that there is grave doubt as to the legality of issuing 9000 shares from the company's unissued stock for this purpose; that Mr. Pierre S. du Pont is willing to sell 9000 shares of common stock of du Pont Company for the purposes of the plan and that inasmuch as this company is the principal stockholder in E. I. du Pont de Nemours & Company and is deeply interested in its success, he recommended that the proper officers be authorized to endorse and deliver up to 9000 shares of common stock of E. I. du Pont de Nemours & Company to Mr. P. S. du Pont as a loan taking as security from him 3800 shares of stock of the Christiana Securities Company.

After discussion it was moved and unanimously carried that the above mentioned report of the Treasurer dated

December 11th, 1919 be accepted and ordered filed and recommendations contained therein approved and

**RESOLVED** that Irene du Pont, Vice President and J. Raskob, Treasurer be and are hereby authorized to endorse and deliver to P. S. du Pont or his nominees 9000 shares of the common stock of E. I. du Pont de Nemours & Company registered on the books of the said corporation in the name of this company.

There being no further business the meeting, on motion, adjourned.

**J J RASKOB**  
Secretary

### **EXHIBIT "D."**

**MEMORANDA OF AGREEMENT** made this 23rd day of December, 1919, between **CHRISTIANA SECURITIES COMPANY**, a corporation, and **PIERRE S. DUPONT**, of Wilmington, Delaware,

#### **WITNESSETH:**

**WHEREAS**, the Christiana Securities Company has, pursuant to resolution of its Board of Directors, loaned to Pierre S. duPont Nine Thousand (9,000) shares of the common stock of E. I. duPont de Nemours and Company upon the terms hereinafter set forth;

**IT IS THEREFORE AGREED** between the parties hereto that the Nine Thousand (9,000) shares of stock so loaned shall be returned in kind by Pierre S. duPont within ten (10) years from the date hereof, and that concurrently with the delivery of said Nine Thousand (9,000) shares, duly endorsed so as to enable said Pierre S. duPont to have the same duly transferred on the books of the said Company to his name or to his nominees, the said Pierre S. duPont shall deliver to the Christiana Securities Company, with the necessary assignments and power of attorney to effect transfer on the books of the Christian Securities Company

Thirty-Eight Hundred (3,800) shares of the capital stock of the Christiana Securities Company, to be held by said last named Company as security for the return of the Nine Thousand (9,000) shares of common stock of the duPont Company so loaned.

IT IS AGREED that all dividends on said Thirty-Eight Hundred (3,800) shares of the stock of the Christiana Securities Company shall be paid to Pierre S. duPont, and that all dividends paid on said Nine Thousand (9,000) shares of duPont Company stock, or an amount equivalent thereto, shall be paid by Pierre S. duPont to the Christiana Securities Company as and when said dividends are declared and paid.

Upon the delivery to the Christiana Securities Company of the Nine Thousand (9,000) shares of the common stock of E. I. duPont de Nemours and Company, duly endorsed, the Christiana Securities Company shall return to Pierre S. duPont the Thirty-Eight Hundred (3,800) shares of Christiana Securities Company stock so pledged to secure said loan.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written.

CHRISTIANA SECURITIES COMPANY

By IRÉNÉE DU PONT

President.

Attest J J RASKOB

Secretary.

PIERRE S DU PONT

Witness:

C. D. HARTMAN JR.

Rec'd Cert. No. 57 for 3800 shs. Stock Christiana Securities Co. as provided for in this agreement.

CHRISTIANA SECS. CO.

J J RASKOB, Treas.

**EXHIBIT "E."**

December 11th, 1919.

**TO: BOARD OF DIRECTORS,****CHRISTIANA SECURITIES COMPANY,****FROM: TREASURER.**

The finance committee of E. I. duPont deNemours & Company has tentatively approved a plan for interesting the members of its executive committee as substantial partners in the corporation which plan requires nine thousand (9,000) shares of common stock. It is not possible to purchase this stock in the market except at what would perhaps be considered exorbitant prices and there is grave doubt as to the legality of issuing nine thousand (9,000) shares from the company's unissued stock for this purpose.

Mr. Pierre S. duPont is willing to sell nine thousand (9,000) shares of common stock of E. I. duPont deNemours & Company for the purposes of the plan. As he has no stock it will be necessary for him to sell short which in turn makes it necessary for him to borrow said stock.

As the Christiana Securities Company is so deeply interested in any plan that has to do with the success of E. I. duPont deNemours & Company in which it is the principal stockholder, I recommend that this Board authorize the officers to endorse and deliver up to nine thousand (9,000) shares of common stock of E. I. duPont deNemours & Company to Mr. Pierre S. duPont as a loan, taking as security from him 3,800 shares of stock of the Christiana Securities Company duly endorsed in blank under such form of agreement as may be approved by our attorney, outlining the fact that said 3,800 shares of Christiana Securities Company are held as collateral to a promise of the said Mr. Pierre S. duPont to return said nine thousand (9,000) shares of common stock of E. I. duPont deNemours & Company to our treasury within ten years; that all dividends on said 3,800 shares of Christiana Securities Company stock shall be paid to Mr. Pierre S.

duPont and that all dividends declared on said nine thousand (9,000) shares of E. I. duPont deNemours & Company stock, or an amount equivalent thereto, shall be remitted by said Mr. Pierre S. duPont to the Christiana Securities Company from time to time as they are declared and paid.

It is understood, of course, that if less than nine thousand (9,000) shares of common stock of E. I. duPont deNemours & Company are borrowed, there will be a proportionate reduction of shares of Christiana Securities Company stock lodged with us as collateral to secure the terms of the agreement.

I have talked with some of the principal stockholders, viz., Messrs. Tallman and Coyne and H. F. Brown with respect to this matter and they unanimously approve of the recommendation contained herein.

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### **EXHIBIT "F."**

**AGREEMENT** made this fourth day of January, 1923, between **CHRISTIANA SECURITIES COMPANY**, a corporation of the State of Delaware, and **PIERRE S. DUPONT**, a resident of the City of Wilmington, County of New Castle, State of Delaware; witnesseth:

**WHEREAS**, on the 23d day of December, 1919, the Christiana Securities Company lent to Pierre S. duPont nine thousand (9,000) shares of the common stock of E. I. duPont deNemours and Company under the terms set forth in that agreement; and

**WHEREAS**, the said E. I. duPont deNemours and Company has declared four stock dividends as follows:

June 15, 1920 .....	2½%
September 15, 1920 .....	2½%
December 15, 1920 .....	2½%
December 15, 1922 .....	50%

IT IS HEREBY AGREED that the liability of the said Pierre S. duPont from this date on is fourteen thousand five hundred twelve (14,512) shares of E. I. duPont deNemours and Company common stock which liability shall include all dividends hereafter paid on said Fourteen thousand five hundred twelve shares of E. I. duPont deNemours and Company common stock.

WHEREAS, under the said agreement of the 23d day of December, 1919, the said Pierre S. duPont deposited with the Christiana Securities Company as collateral on the above mentioned stock loan three thousand eight hundred (3,800) shares of the capital stock of the Christiana Securities Company, which company has recently declared the following stock dividends; to wit: 200% in 7% Preferred and 100% of its common stock;

IT IS HEREBY FURTHER AGREED, through mutual consent and convenience, that the said Pierre S. duPont shall deposit with the Christiana Securities Company additional collateral, as follows:

Eleven thousand four hundred (11,400) shares of the common stock of the Christiana Securities Company.

In all other respects the terms of the agreement of the 23rd day of December, 1919, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this fourth day of January, 1923.

CHRISTIANA SECURITIES COMPANY

By IRÉNÉE DU PONT

President

PIERRE S. DU PONT

Witness:

HENRY DAVIS

F. A. McHUGH

**EXHIBIT "G."**

**AGREEMENT** made this twelfth day of August 1925, between **CHRISTIANA SECURITIES COMPANY**, a corporation of the State of Delaware, and **PIERRE S. DUPONT**, a resident of the City of Wilmington, County of New Castle, State of Delaware; witnesseth:

**WHEREAS**, on the 23d day of December, 1919, the Christiana Securities Company lent to Pierre S. duPont nine thousand (9,000) shares of the common stock of E. I. duPont deNemours and Company under the terms set forth in that agreement; and

**WHEREAS**, the said E. I. duPont deNemours and Company has declared five stock dividends as follows:

June 15, 1920 .....	2½%
September 15, 1920 .....	2½%
December 15, 1920 .....	2½%
December 15, 1922 .....	50%
August 10, 1925 .....	40%

**AND, WHEREAS**, Mr. P. S. duPont delivered to Christiana Securities Company the stock dividend he received on nine thousand (9,000) shares, as follows:

June 15, 1920 .....	225 shares
Sept. 15, 1920 .....	225 "

and on December 27, 1920 borrowed additional shares of E. I. du Pont deNemours & Company common stock in the amount of four hundred and fifty (450) shares.

**IT IS HEREBY AGREED** that the liability of the said Pierre S. duPont from this date on is twenty thousand three hundred sixteen. (20,316) shares of E. I. duPont deNemours and Company common stock which liability shall include all dividends hereafter paid on said Twenty thousand three hundred sixteen (20,316) shares of E. I. duPont deNemours and Company common stock.

*Exhibit "G" of Stipulation of Facts*

WHEREAS, under the said agreement of the 23d day of December, 1919, the said Pierre S. duPont deposited with the Christiana Securities Company as collateral on the above mentioned stock three thousand eight hundred

3,800 shares

of the capital stock of the Christiana Securities Co., which company has since declared the following stock dividends; to wit: 200% in 7% Preferred and 100% of its common stock; and

Under an agreement dated January 4th, 1923, said Pierre S. duPont deposited with the Christiana Securities Company additional collateral, viz:

11,400 shares

of the common stock of Christiana Securities Co.

Making a total of shares of Christiana Securities Company common stock deposited.

15,200 "

On June 16, 1924 the said Pierre S. duPont withdrew .....

7,880 "

of Christiana Securities Company common stock and substituted therefor \$850,000. par value of miscellaneous municipal bonds, per attached list,

Leaving a balance of Christiana Securities Company common stock now held as collateral

7,320 "

In all other respects the terms of the agreement of the 23rd day of December, 1919, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this twelfth day of August 1925.

CHRISTIANA SECURITIES COMPANY

By IRÉNÉE DU PONT

Vice-President

PIERRE S. DU PONT

Witness:

F. A. McHUGH

R. T. ELLIS

**LIST OF BONDS DEPOSITED WITH  
CHRISTIANA SECURITIES COMPANY AS COLLATERAL**

\$25,000.	City and County of San Francisco Relief Home Bond, 5's, 1930,
\$25,000.	City and County of San Francisco Relief Home Bond, 5's, 1929,
\$50,000.	Seattle School Bond, Series 9, 4% School Bldg. Bond, 1929,
\$25,000.	The City of Cincinnati Rapid Transit Railway Bond, 5's, 1967,
\$25,000.	State of Utah, Salt Lake City School District, City School Bond, Series 11, 5's, 1939,
\$50,000.	City of Elizabeth, County of Union, State of N. J. Temporary Loan Bond, 4½'s, 1930,
\$50,000.	City of St. Paul, State of Minnesota, County of Ramsey, Library Bond, 4½'s, 1943,
\$25,000.	City of Cleveland, Ohio, 4½'s, 1932 (Registered Bond)
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1929,
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1930,
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1933,
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1935,
\$10,000.	City of Woonsocket Sewer Bond, dated June 1, 1922, 4¼'s, 1929,
\$ 5,000.	City of Woonsocket Sewer Bond, dated June 1, 1922, 4¼'s, 1930,
\$25,000.	Joint Stock Bond Loan, Charles-
	town, West Va. 5's ..... Nov. 1, 1932
\$25,000.	City of Denver School 5s ..... Nov. 1, 1953

*Exhibit "H" of Stipulation of Facts*

\$25,000.	City of Denver 5s .....	Nov. 1, 1932
\$50,000.	City of Elizabeth, New Jersey 4½s .....	May 1, 1929
\$50,000.	County of Mahoning, Ohio, 6s...	Mch. 1, 1930
\$50,000.	Knoxville (City of) 5½s .....	Sept. 1, 1950
\$25,000.	City of Los Angeles, California 4¾s .....	Sept. 1, 1932
\$50,000.	Atlantic County, New Jersey 5s...	Aug. 1, 1929
\$50,000.	State of Kansas 4½s .....	May 1, 1933
\$50,000.	Federal Land Bank Loan of Nebraska .....	Jan. 1, 1933-43
\$20,000.	City of Bridgeport, Conn., Sewer Construction Bonds 5's, 1928,	
\$100,000.	The City of Jersey City, 4% Water Bonds, 1932 (Registered Bonds)	
<hr/>		
\$850,000.		

**EXHIBIT "H."**

AGREEMENT made this twenty-eighth day of October 1926, between CHRISTIANA SECURITIES COMPANY, a corporation of the State of Delaware, and PIERRE S. DUPONT, a resident of the City of Wilmington, County of New Castle, State of Delaware; witnesseth:

WHEREAS, on the 23d day of December, 1919, the Christiana Securities Company lent to Pierre S. duPont nine thousand (9,000) shares of the common stock of E. I. duPont deNemours and Company under the terms set forth in that agreement; and

WHEREAS, the said E. I. duPont deNemours and Company has declared five stock dividends as follows:

June 15, 1920 .....	2½%
September 15, 1920 ....	2½%
December 15, 1920 .....	2½%
December 15, 1922 .....	50%
August 10, 1925 .....	40%

AND, WHEREAS, Mr. P. S. duPont delivered to Christiana Securities Company the stock dividend he received on nine thousand (9,000) shares, as follows:

June 15, 1920	.....	225 shares
Sept. 15, 1920	.....	225 "

and on December 27, 1920 borrowed additional shares of E. I. du Pont de Nemours & Company common stock in the amount of four hundred and fifty (450) shares, and delivered to Christiana Securities Company out of the stock dividend he received on December 15, 1922 one-half of one share, and

WHEREAS, E. I. duPont de Nemours & Company issued a new kind of common stock having no par value, to replace the \$100. par value common stock heretofore in use, and on October 28, 1926 effected an exchange of the \$100. par value common stock for the new no-par value common stock on the basis of two (2) shares of the new common stock for one (1) share of the old common stock;

Now, THEREFORE, IT IS HEREBY AGREED that the liability of the said Pierre S. duPont from this date on is forty thousand six hundred thirty-two (40,632) shares of E. I. duPont de Nemours and Company no-par value common stock as follows:

12/23/19	Loaned to Mr. P. S. duPont	9,000 shares
6/15/20	Stock dividend 2½%— 225 shares	Delivered to Christiana Sec. Co. by Mr. P. S. duPont
9/15/20	Stock dividend 2½%— 225 shares	Do
12/15/20	Stock dividend 2½%	225 shares
12/17/20	Loaned to Mr. P. S. duPont	450 "
TOTAL		9,675 "

*Exhibit "H" of Stipulation of Facts*

12/15/22	Stock Dividend 50%	4,837.5 shares
	<b>TOTAL</b>	14,512.5 "
12/15/22	Delivered to C. S. Co. by Mr. duPont	.5 "
	<b>BALANCE</b>	14,512 "
8/10/25	Stock dividend 40%	5,804 "
	<b>TOTAL</b>	20,316 "
10/28/26	DuPont Com. \$100. par value stock exchanged for new no-par value stock on basis 2 shares new for one share of old stock	40,632 "

which liability shall include all dividends hereafter paid on said forty thousand six hundred thirty-two (40,632) shares of E. I. duPont de Nemours and Company no-par value common stock.

WHEREAS, under the said agreement of the 23d day of December 1919, the said Pierre S. duPont deposited with the Christiana Securities Company as collateral on the above mentioned stock three thousand eight hundred

3,800 shares

of the capital stock of the Christiana Securities Co., which company has since declared the following stock dividends; to wit: 200% in 7% Preferred and 100% of its common stock; and

Under an agreement dated January 4th, 1923, said Pierre S. duPont deposited with the Christiana Securities Co. additional collateral, viz.

11,400 shares

of the common stock of Christiana Securities Co.

Making a total of shares of Christiana Securities Company common stock deposited.. 15,200 "

**Exhibit "H" of Stipulation of Facts**

**59**

On June 16, 1924 the said Pierre S. duPont withdrew ..... 7,880 shares of Christiana Securities Company common stock and substituted therefor \$850,000. par value of miscellaneous municipal bonds, per attached list, Leaving a balance of Christiana Securities Company common stock now held as collateral 7,320 "

In all other respects the terms of the agreement of the 23rd day of December, 1919, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this twenty-eighth day of October, 1926.

**CHRISTIANA SECURITIES COMPANY**

By IRÉNÉE DU PONT  
Vice-President  
PIERRE S. DU PONT

Witness:

W. E. KOLEK  
RALPH T. ELLIS

**LIST OF BONDS DEPOSITED WITH  
CHRISTIANA SECURITIES COMPANY AS COLLATERAL**

\$25,000.	City and County of San Francisco Relief Home Bond, 5's, 1930,
\$25,000.	City and County of San Francisco Relief Home Bldg., 5's, 1929,
\$50,000.	Seattle School Bond, Series 9, 4% School Bldg. Bond, 1929,
\$25,000.	The City of Cincinnati Rapid Transit Railway Bond, 5's, 1967,
\$25,000.	State of Utah, Salt Lake City School District, City School Bond, Series 11, 5's, 1939,
\$50,000.	City of Elizabeth, County of Union, State of N. J. Temporary Loan Bond, 4½'s, 1930,
\$50,000.	City of St. Paul, State of Minnesota, County of Ramsey, Library Bond, 4½'s, 1943,
\$25,000.	City of Cleveland, Ohio, 4½'s, 1932 (Registered Bond)
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1929,
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1930,
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1933,
\$10,000.	Claymont Special School District, State of Delaware, School Building Bond of 1922, 5¼'s, 1935,
\$10,000.	City of Woonsocket Sewer Bond, dated June 1, 1922, 4¼'s, 1929,
\$ 5,000.	City of Woonsocket Sewer Bond, dated June 1, 1922, 4¼'s, 1930,
\$25,000.	Joint Stock Bond Loan, Charles-town, West Va, 5's ..... Nov. 1, 1932
\$25,000.	City of Denver School 5s ..... Nov. 1, 1953

**Exhibit "H" of Stipulation of Facts 61**

\$25,000.	City of Denver 5s .....	Nov. 1, 1932
\$50,000.	City of Elizabeth, New Jersey 4½s .....	May 1, 1929
\$50,000.	County of Mahoning, Ohio, 6s...	Mch. 1, 1930
\$50,000.	Knoxville (City of) 5½s .....	Sept. 1, 1950
\$25,000.	City of Los Angeles, California 4¾s .....	Sept. 1, 1932
\$50,000.	Atlantic County, New Jersey 5s..	Aug. 1, 1929
\$50,000.	State of Kansas 4½s .....	May 1, 1933
\$50,000.	Federal Land Bank Loan of Nebraska .....	Jan. 1, 1933-43
\$20,000.	City of Bridgeport, Conn., Sewer Construction Bonds 5's, 1928,	
\$100,000.	The City of Jersey City, 4% Water Bonds, 1932 (Registered Bonds)	
<hr/> \$850,000.		

**EXHIBIT "I."**

**AGREEMENT** made and entered into this 21st day of January, A. D. 1929, by and between **CHRISTIANA SECURITIES COMPANY**, a corporation of Delaware, and **PIERRE S. DUPONT**, of the City of Wilmington, County of New Castle, State of Delaware, **WITNESSETH:**

**WHEREAS** on the 23rd day of December, 1919, **CHRISTIANA SECURITIES COMPANY** lent to **PIERRE S. DUPONT** Nine Thousand (9,000) shares of the common stock of **E. I. du Pont de Nemours and Company**, of the par value of One Hundred Dollars (\$100) per share, under the terms set forth in said agreement; and

**WHEREAS**, by virtue of the declaration and payment by **E. I. du Pont de Nemours and Company** of a total of five stock dividends during the years 1920, 1922 and 1925, from which stock dividends received by **PIERRE S. DUPONT** there were paid over to **CHRISTIANA SECURITIES COMPANY** a total of Four Hundred Fifty (450) shares, and by virtue of the additional lending by **CHRISTIANA SECURITIES COMPANY** to **PIERRE S. DUPONT** on December 27, 1920 of Four Hundred Fifty (450) shares of said common stock of **E. I. du Pont de Nemours and Company**, and the delivery by **PIERRE S. DUPONT** to **CHRISTIANA SECURITIES COMPANY** on December 15, 1922 of one-half ( $\frac{1}{2}$ ) of one share of said common stock of **E. I. du Pont de Nemours and Company**, and by virtue of the exchange in the year 1926 of two shares of the common stock of said **E. I. du Pont de Nemours and Company** without nominal or par value for each share of common stock of the par value of One Hundred Dollars per share outstanding, the liability of **PIERRE S. DUPONT** to **CHRISTIANA SECURITIES COMPANY**, from October 28, 1926 to the present date, amounted to Forty Thousand Six Hundred Thirty-two (40,632) shares of common stock without nominal or par value of **E. I. du Pont de Nemours and Company**, all as set forth in more detail in agreement entered into between the parties hereto on October 28, 1926, to which agreement reference is hereby made for greater particularity; and

WHEREAS at this date the said PIERRE S. DUPONT has on deposit with CHRISTIANA SECURITIES COMPANY, as collateral to secure the above mentioned loan of common stock of E. I. du Pont de Nemours and Company, Seven Thousand Three Hundred Twenty (7,320) shares of the common stock of Christiana Securities Company and Eight Hundred Forty Thousand Dollars (\$840,000) face value of State and Municipal Bonds; and

WHEREAS on January 21, 1929, E. I. du Pont de Nemours and Company exchanged for the common stock of said Company without nominal or par value outstanding shares of the common stock of said Company of the par value of Twenty Dollars (\$20) per share on the basis of three and one-half ( $3\frac{1}{2}$ ) of said shares of the par value of Twenty Dollars (\$20) per share for each share of the common stock outstanding without nominal or par value:

NOW THEREFORE, IT IS HEREBY AGREED that the liability of the said PIERRE S. DUPONT to CHRISTIANA SECURITIES COMPANY from this date forth is One Hundred Forty-two Thousand, Two Hundred Twelve (142,212) shares of the common stock of E. I. du Pont de Nemours and Company of the par value of Twenty Dollars (\$20) per share, determined as follows:

12/23/19	Loaned to Pierre S. duPont,	9,000 shares (\$100 par value)
6/15/20	Stock dividend $2\frac{1}{2}\%$ —225 shares	Delivered to Christiana Securities Company by Pierre S. duPont
9/15/20	Stock dividend $2\frac{1}{2}\%$ —225 shares	do.
12/15/20	Stock dividend $2\frac{1}{2}\%$ ,	225 shares
12/27/20	Loaned to Pierre S. duPont,	450 shares
	Total,	<hr/> 9,675 shares

**Exhibit "I" of Stipulation of Facts**

12/15/22	Stock dividend, 50%,	4,837.5 shares
	Total,	14,512.5 shares
12/15/22	Delivered to Christiana Securities Co. by Pierre S. du Pont,	.5 share
	Balance,	14,512 shares
8/10/25	Stock dividend 40%,	5,804 shares
	Total,	20,316 shares (\$100 par value)
10/28/26	Exchange by du Pont Co. of new no par value stock for \$100 par value stock outstanding on basis 2 shares no par value stock for each share of \$100 par value stock,	40,632 shares (No par value)
1/21/29	Exchange by du Pont Co. of new \$20 par value stock for no par value stock outstanding on basis 3½ shares \$20 par value stock for each share of no par value stock,	142,212 shares, (\$20 par value),

which liability shall include all dividends hereafter paid on said One Hundred Forty-two Thousand, Two Hundred Twelve (142,212) shares of the common stock of E. I. du Pont de Nemours and Company of the par value of Twenty Dollars (\$20) per share.

IT IS FURTHER AGREED between the parties hereto that in all other respects the terms of the agreement of December 23, 1920, and of the agreement of October 28, 1926, both above referred to, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF CHRISTIANA SECURITIES COMPANY has caused these presents to be executed by officers thereunto duly authorized and sealed with the seal of the corporation, and PIERRE S. DUPONT has hereunto set his hand and seal, this 21st day of January, A. D. 1929.

CHRISTIANA SECURITIES COMPANY

By LAMMOT DUPONT  
Vice President

Attest:

FRANK L. GAREY  
Asst. Secretary

FRANK A. McHUGH

PIERRE S DU PONT

EXHIBIT "J."

Finance  
Committee  
Secy's No. 2109

Wilmington, Delaware,  
December 22, 1919

FINANCE COMMITTEE

(Mr. M. D. Fisher, Secretary)

Gentlemen:—

In accordance with your action on December 16th, I have interviewed individually the members of the Executive Committee on the subject of an employment contract and have the assent of each one to the provisions you have outlined.

Mr. P. S. duPont has made an offer of 1000 shares of E. I. duPont deNemours & Co. Common stock to each of the

Executive Committee members and each desires to accept the offer. In view of the great desirability of having these men interested as partners in the business and of the difficulty of most of them to finance the purchase, I recommend that the Finance Committee empower the Treasurer to loan to each, for five years, \$320,000, being the purchase price of the stock, and to accept as collateral on each loan 1000 shares of duPont Common stock and insurance policy of \$150,000 on the life of each maker of the note; the premium on these term policies to be paid by the Company.

I also recommend that I be empowered to execute the contract with each member as per the attached form\* which has been drawn up by the Legal Department.

As it is particularly desirable that this arrangement be entered into before the end of the year, I should like to have a special meeting of the Finance Committee to take action thereon on Wednesday, the 24th, at 10 A. M.

Very truly yours

(s) IRÉNÉE DU PONT, President

\*Contract referred to will be read at the meeting.

#### EXHIBIT "K."

##### E. I. DU PONT DE NEMOURS & COMPANY FINANCE COMMITTEE

##### COMPENSATION TO EXECUTIVE COMMITTEE MEMBERS:

Report was received from the President, dated December 22, 1919 (#2109) in connection with the above-mentioned subject. The President enclosed two suggested contracts with the members of the Executive Committee, same having been prepared by the Legal Department, one being an employment contract and the other a loan contract. After full discussion of the employment contract, the following resolution was offered and unanimously adopted:—

**RESOLVED**, that the proper Officers of this Company be and they hereby are authorized to enter into the fol-

lowing contract (when approved by the Legal Department) with each of the following employes, viz:—Lam-mot duPont, F. D. Brown, W. S. Carpenter, Jr., A. Felix duPont, J. B. D. Edge, C. A. Meade, C. A. Patterson, F. W. Pickard and W. C. Spruance, members of the Executive Committee:—

"THIS AGREEMENT entered into as of the 1st day of January, 1920, between E. I. DUPONT DENEMOURS AND COMPANY, a corporation (hereinafter referred to as the 'Company'), and.....a duly elected and acting Executive Committeeman of said Company (hereinafter referred to as the 'Committeeman'),

**WITNESSETH:**

WHEREAS, in the judgment of the Board of Directors of the Company it is advisable to fix and determine the compensation to be paid for the services of the Executive Committeeman in advance of the performance of such services, and to provide for additional compensation to be based upon the duration of such services and the success of the Company's business under the management of its Executive Committee:

THEREFORE, in consideration of the premises, it is mutually agreed as follows:—

(a) That the Committeeman shall receive and the Company shall pay a salary at the rate of Twenty-five Hundred Dollars (\$2500.00) per month.

(b) In case the Committeeman is on the 31st day of December, 1924 still in the employ of the Company as a member of its Executive Committee, or is occupying another position in the employ of the Company approved by the Finance Committee of said Company as equivalent thereto, but not otherwise, the Committeeman shall receive and the Company shall pay as additional compensation the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) in cash.

*Exhibit "K" of Stipulation of Facts*

(c) In addition to the compensation provided in (a) and (b) aforesaid, the Committeeman shall receive and the Company shall pay one per cent. (1%) of the annual net earnings of the Company received from the capital employed under the supervision and control of its Executive Committee after deducting ten per cent. (10%) on the amount of the Company's capital so employed as shown on the books of the Company on the first day of January in such year, including the present good-will item of \$22,945,619.83, and excluding in the determination of capital so employed the stock of the duPont American Industries and other assets not under the jurisdiction of the Executive Committee of said Company, and excluding in the determination of net earnings all receipts derived from the duPont American Industries or other sources whereof said Executive Committee shall not have the direct management. This additional compensation shall be paid as soon as may be after the 31st day of December in each year, and shall be payable in the common stock of the Company at cost if said stock can be obtained at prices which in the judgment of the Finance Committee are reasonable, otherwise this additional compensation to be payable in cash.

In the event of the termination of this Agreement, by the death of the Committeeman, or otherwise, during the course of any year, the Committeeman, or his estate, shall be paid the stipulated percentage of the net profits provided in paragraph (c) as reckoned up to the time of such termination.

(d) In addition to the compensation provided for in (a) (b) and (c), the Company shall bear and pay the premiums for five (5) years upon an insurance policy for One Hundred and Fifty Thousand Dollars (\$150,000.00) on the life of the Committeeman, calculated at the lowest premium rates at which such insurance can be secured.

The additional compensation herein provided shall be in lieu of "B" Bonus compensation under the bonus plan of the Company.

Nothing herein contained shall be held or construed to limit or qualify in any way the operation of the By-Laws of the Company or the power of the Board of Directors in regard to the election of the Executive Committee or the management of the Company's business.

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals as of the day and year first above written.

E. I. DUPONT DENEMOURS AND COMPANY

By

President

Attest

Secretary  
Committeeman

The loan contract was then taken up for consideration and several changes in same suggested, final action being deferred until Mr. J. P. Laffey could be present.

**COMPENSATION TO EXECUTIVE COMMITTEE MEMBERS:**

Judge Laffey being present, the Committee returned to consideration of the proposed loan contract with the members of the Executive Committee. After full discussion, the following resolution was offered and unanimously adopted:

**RESOLVED**, that the proper Officers of this Company be and they are hereby authorized to enter into the following contract (when approved by the Legal Department) with each of the following employes, viz:—Lamot duPont, F. D. Brown, W. S. Carpenter, Jr., A. Felix duPont, J. B. D. Edge, C. A. Meade, C. A. Patterson, F. W. Pickard and W. C. Spruance, members of the Executive Committee;

*Exhibit "K" of Stipulation of Facts*

RESOLVED FURTHER, that the proper Officers of this Company be and they are hereby authorized and empowered to loan to each of said individuals the Three Hundred and Twenty Thousand Dollars (\$320,000.00) provided for in said Agreement:—

"THIS AGREEMENT entered into as of the 26th day of December, 1919, between E. I. DUPONT DENEMOURS AND COMPANY, a corporation, (hereinafter referred to as the 'Company'), and.....a duly elected and acting Executive Committeeman of said Company, (hereinafter referred to as the 'Committeeman'),

WITNESSETH:—

WHEREAS, the Committeeman has purchased one thousand (1,000) shares of the Common stock of the Company at Three Hundred and Twenty Dollars (\$320.00) per share, and has applied to the Company for a loan to finance said purchase, payment of said loan to be secured as hereinafter provided; and

WHEREAS, the making of said loan has been approved by the Finance Committee of the Company:—

NOW, THEREFORE, IT IS HEREBY AGREED

(1) That the Company shall loan to the Committeeman until the 31st day of December, 1924, the sum of Three Hundred and Twenty Thousand Dollars (\$320,000.00) to be used by the Committeeman in paying the purchase price of one thousand (1,000) share of the common stock of the Company; that the Company will open an account with the Committeeman as of the 26th day of December, 1919, wherein the principal of the loan shall be charged together with interest thereon at the rate of five per cent. (5%) per annum from December 15, 1919, calculated quarterly, and wherein shall be credited to the Committeeman all cash dividends paid on said stock. The Committeeman agrees to pay the

Company on the 31st day of December, 1924, the full amount of the balance then due the Company on said loan.

(2) As security for the payment of said loan by the Committeeman, the certificates evidencing the one thousand (1,000) shares of stock aforesaid, together with all dividends thereon, shall be delivered and paid over to the Company and retained in its custody, with duly executed irrevocable dividend orders, powers of attorney, and assignments, and all other instruments requisite to enable the Company to sell or transfer said stock and dividends, in case the stock and dividends do not become deliverable to the Committeeman under this agreement, whether because said Committeeman shall fail to perform his obligation to make payment in full on the date hereinbefore set forth, or whether the Company elects to exercise its option hereinafter set forth to purchase and take over the same.

(3) As further security for the payment of said loan, the Committeeman shall procure and keep in force during the life of this agreement insurance on his life in the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) which policy shall be assigned to the Company. In case the Committeeman is unable to obtain life insurance as aforesaid he shall have the right to deposit in lieu thereof collateral satisfactory to the Company of the value of One Hundred and Fifty Thousand Dollars (\$150,000.00). In the event of the Committeeman's death the proceeds from said life insurance policy, or from the sale of other collateral deposited in lieu thereof, shall be applied by the Company to the payment of said loan. In case the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) which the Company is obligated to pay under the provisions of Paragraph (b) of an employment contract between the parties hereto dated as of January 1, 1920, becomes payable under the terms of said contract, the said One

Hundred and Fifty Thousand Dollars (\$150,000.00) shall be applied by the Company to the payment of said loan.

(4) In consideration of the making of the loan aforesaid, the Committeeman hereby gives and grants to the Company an option to purchase the said one thousand (1,000) shares of stock together with all dividends paid thereon from December 26, 1919, except cash dividends, for an amount equal to the debit balance in his account, which amount shall be credited to his account and the account thus closed, in the event that the Committeeman shall at any time prior to the 31st day of December, 1924, cease to be a member of the Executive Committee of the Company or to hold such other office as the Finance Committee of the Company shall have expressly approved as a substitute therefor under this agreement, whether such cessation shall be voluntary or involuntary, with or without cause, or in the event that the Committeeman shall have continued in office until the 31st day of December, 1924, but shall not have paid said loan in full when it becomes due and payable as hereinbefore provided. In case the Company exercises this option it shall reassign said life insurance policy (or collateral substituted therefor).

(5) It is agreed that in the event of the death of the Committeeman during the life of this contract and while holding the office of Executive Committeeman or a substitute office approved by the Finance Committee as hereinbefore provided, the Company shall have the option to purchase said one thousand (1,000) shares of stock together with all dividends, other than cash dividends, declared thereon, as provided in Paragraph (4) at the then fair market value of said stock and dividends, other than cash dividends, which value shall be credited to the Committeeman's account and a check for the balance, if any, in said account shall be then delivered to his estate.

In case the Company does not exercise the option to purchase the stock as aforesaid, and the Company for any reason is obliged to resort to the security held by it to secure the payments of said loan, it shall, after applying all cash held by it as security to the satisfaction of said loan, sell the stock or other property so held as security in the manner now or hereafter provided by the laws of the State of Delaware for the sale of collaterals, pledged to secure an indebtedness.

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals as of the day and year first above written.

E. I. DUPONT DENEMOURS AND COMPANY

By

President

Attest.

Secretary  
Committeeman

It was then moved and unanimously carried that the above-mentioned report from the President dated December 22, 1919 (#2109) be accepted and ordered filed.

This is to certify that the foregoing are true and correct copies of extracts from minutes of meeting of the Finance Committee of E. I. duPont deNemours and Company held on December 24, 1919.

M D FISHER

Assistant Secretary

E. I. duPont deNemours and Company.

## EXHIBIT "L."

Wilmington, Delaware,  
December 20, 1919.

Messrs. Lammot du Pont,  
F. D. Brown,  
W. S. Carpenter, Jr.  
A. Felix du Pont,  
J. B. D. Edge,  
C. A. Meade,  
C. A. Patterson,  
F. W. Pickard,  
W. C. Spruance, J.

Gentlemen:—

Attached is a computation used by P. S. du Pont in arriving at a price for Du Pont Common Stock, for the purpose that I spoke to you about on Thursday last.

In Pierre's absence, I think it would be well for you to look over this computation and give him the benefit of any criticism which you may have, either concerning the principle of value<sup>ing</sup> of this stock, as indicated, or in the detail computation of the amount.

Very truly yours,

IRÉNÉE DU PONT, President  
Irenee du Pont

[Note: The computation described in Exhibit L (letter from Irene du Pont, President, dated December 1919) is omitted by consent. It was a report on "Net asset Value du Pont Common stock," addressed to P. S. du Pont, Chairman, from Treasurer, showing detailed computation resulting in conclusion that net asset value of du Pont common stock was \$320.94 per share, which said value is set out in the Court's finding number 22.]

**EXHIBIT "M."**

[Omitted by consent. It consisted of four ledger sheets of Laird & Company, brokers, showing transactions in du Pont Common stock from December 1, 1919, to July 2, 1920. It is agreed between the parties that the original Exhibits L and M may be filed with the Clerk of the Circuit Court of Appeals for the Third Circuit, if requested either by plaintiff or defendant.]

**EXHIBIT "N."**

**THIS TRUST AGREEMENT** made this 30th day of November, A. D. 1918, by and between **PIERRE S. DUPONT**, of the City of Wilmington, County of New Castle and State of Delaware, of the first part, and **H. RODNEY SHARP**, of said City, County and State, of the second part,

**WITNESSETH:**

**THAT WHEREAS** the said Pierre S. duPont is desirous of providing funds for the construction and outfitting of a building to be erected on the grounds of the Chester County Hospital at West Chester, in the County of Chester and Commonwealth of Pennsylvania, said building to be used in connection with and to form a part of the buildings now owned and occupied by said Chester County Hospital, and to be erected to and designated as a memorial to Lewes A. Mason, deceased; and

**WHEREAS** the said Pierre S. duPont to this end desires to provide funds in the amount of Three Hundred Thousand Dollars (\$300,000.00) at the times and according to the terms hereinafter set forth;

**Now, THEREFORE**, in consideration of the sum of One Dollar (\$1.00) by the said party of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the party of the first part has bargained, sold, assigned, transferred, set over and delivered

unto and by these presents does bargain, sell, assign, transfer, set over and deliver unto the party of the second part, the following described personal property, to-wit: ten thousand (10,000) shares of the common capital stock of E. I. du Pont de Nemours and Company, a corporation organized and existing under the laws of the State of Delaware, as evidenced by certificate number E. 11706,....., in trust nevertheless for the following purposes and subject to the following provisions, viz:—

ARTICLE I. The said trustee shall collect and receive all dividends, income, profits, gains and benefits arising from said shares of stock or from any other securities which may be substituted for said shares as hereinafter provided, and from time to time as said income, dividends, gains and profits shall accrue, to pay over the same to the Treasurer of the said Chester County Hospital in payment of duly approved vouchers covering the whole or any part of the cost connected with or incident to the constructing and outfitting of the aforesaid hospital building.

ARTICLE II. The said trustee shall have the power and authority solely in his discretion to exchange said ten thousand (10,000) shares of the common capital stock of E. I. du Pont de Nemours and Company for other securities or to sell the same and reinvest the proceeds in other securities, such reinvestments to be subject to all the terms and conditions of this trust.

ARTICLE III. Upon the death, incapacity or refusal to act of the said trustee, Lammot duPont, of Christiana Hundred, New Castle County, State of Delaware, and Irene duPont, of Christiana Hundred, New Castle County, State of Delaware, in the order named, are hereby appointed to the trusteeship with all the powers and subject to all the conditions, restrictions and limitations of this trust.

ARTICLE IV.-(a) This trust is founded upon the express condition that all payments made on account of the construction or outfitting of said hospital building or in con-

nection therewith, shall be in accordance with plans which have the approval of the party of the first part. Such payments shall be made by the trustee entirely in his discretion, and there shall be no liability upon him for the application, misapplication or non-application of the funds for the construction and outfitting of said hospital building. It is, however, specifically provided that no vouchers shall be paid unless same shall be approved by the trustees of the Chester County Hospital or their agent.

(b) When the total payments made by the trustee as aforesaid shall aggregate the sum of Three Hundred Thousand Dollars (\$300,000.00), the principal trust fund and any income, profits or benefits remaining in the hands of the trustee, cash or otherwise, shall be returned to the party of the first part or to the legal representative of his estate.

(c) If the said hospital building shall be constructed and outfitted at a cost less than Three Hundred Thousand Dollars (\$300,000.00), the trustee shall turn over the difference between this sum and Three Hundred Thousand Dollars (\$300,000.00) to the trustees of the Chester County Hospital, the same to be invested by them as an endowment fund, the income from which to be available for the maintenance of said hospital.

(d) In the event that the income from this trust fund is insufficient to speedily meet the payments due for the construction and outfitting of said hospital building, the trustee is hereby empowered to borrow such sums as may be necessary to meet these payments, pledging all or any part of the trust fund as collateral to secure such loan or loans, and he shall further in his discretion be empowered to sell a portion of the trust fund to meet such payments.

IN CONSIDERATION of the premises and the mutual promises and covenants hereinbefore promised to be kept and performed, the party of the second part hereby accepts the within trust, subject to all the conditions, restrictions and

limitations thereunto belonging or in any wise appertaining, and hereby expressly covenants and agrees that he will in all things faithfully discharge the duties of trustee as aforesaid.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year hereinbefore written.

PIERRE S. DU PONT (SEAL)  
H. RODNEY SHARP (SEAL)

Signed, sealed and delivered  
in the presence of:

RALPH T. ELLIS

STATE OF DELAWARE  
COUNTY OF NEW CASTLE } ss

BE IT REMEMBERED, that on this 30 day of November, A. D. 1918, personally came before me, G. D. Hopkins, a Notary Public in and for the State and County aforesaid, Pierre S. duPont and H. Rodney Sharp, parties to this Indenture, known to me personally to be such, and severally acknowledged this indenture to be their deed.

Given under my hand and seal of office the day and year aforesaid.

G. D. HOPKINS  
(Seal) Notary Public.

### EXHIBIT "O."

This Agreement made this twenty sixth day of September, A. D. 1919, by and between Pierre S. duPont of the City of Wilmington, New Castle County and State of Delaware, of the first part, and H. Rodney Sharp, Trustee, of the said City, County and State, of the second part.

WHEREAS, by a Trust Agreement dated the thirtieth day of November, A. D. 1918, between the said Pierre S. duPont and said H. Rodney Sharp, it is recited as follows:

That Whereas, the said Pierre S. duPont is desirous of providing funds for the construction and outfitting of a building to be erected on the grounds of the Chester County Hospital of West Chester, in the County of Chester and Commonwealth of Pennsylvania, said building to be used in connection with and to form a part of the buildings now owned and occupied by said Chester County Hospital, and to be erected to and designated as a memorial to Lewes A. Mason, deceased;

And Whereas, the said Pierre S. duPont to this end desires to provide funds in the amount of Three Hundred Thousand Dollars (\$300,000) "etc., etc."

AND WHEREAS, it now appears that money or funds in excess of Three Hundred Thousand Dollars (\$300,000) must be provided for the construction and outfitting of the building to be erected to and designated as a memorial to Lewes A. Mason, deceased.

AND WHEREAS, said Pierre S. duPont desires to provide additional money or funds in the amount of Three Hundred Thousand Dollars (\$300,000) to be applied by said trustee as provided in said Trust Agreement dated the thirtieth day of November, A. D. 1918.

Now, this agreement witnesseth, and it is hereby agreed and declared as follows:

(1) That this Agreement is supplemental to the said Trust Agreement dated the thirtieth day of November, A. D. 1918, made between said Pierre S. duPont of the first part and the said H. Rodney Sharp of the second part, a copy of which Trust Agreement is hereto annexed and made a part hereof.

(2) (a) That H. Rodney Sharp, Trustee, or the other trustee or trustees of these presents, shall continue to stand possessed of the stock, shares and securities so sold, assigned, transferred, set over and delivered to him under said Trust Agreement, dated the thirtieth day of November, A. D. 1918 and shall continue to hold and administer said principal trust-fund and the income, profits and benefits there-

*Exhibit "O" of Stipulation of Facts*

from under and pursuant to the trusts contained in said Trust Agreement until said income, profits or benefits shall aggregate the further sum of Three Hundred Thousand Dollars (\$300,000), whereby the total income, profits or benefits received by said trustee shall aggregate Six Hundred Thousand Dollars (\$600,000).

(b) When the total payments made by the trustee as aforesaid shall aggregate the sum of Six Hundred Thousand Dollars (\$600,000) the principal trust-fund and any income, profits or benefits remaining in the hands of the trustee, cash or otherwise, shall be returned to the party of the first part or to the legal representative of his estate.

(c) If the said hospital building shall be constructed and outfitted at a cost less than Six Hundred Thousand Dollars (\$600,000), the trustee shall turn over the difference between this sum and Six Hundred Thousand Dollars (\$600,000), to the trustees of the Chester County Hospital, the same to be invested by them as endowment fund, the income from which to be available for the maintenance of said hospital.

IN CONSIDERATION of the premises and the mutual promises and covenants hereinbefore promised to be kept and performed, the party of the second part hereby accepts the within supplemental trust, subject to all the conditions, restrictions and limitations thereunto belonging or in any wise appertaining, and hereby expressly covenants and agrees that he will in all things faithfully discharge the duties of trustee as aforesaid.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year hereinbefore written.

Signed, sealed and delivered  
in the presence of:

SOPHIE E. BAIRD

PIERRE S. DU PONT (SEAL)

H. RODNEY SHARP (SEAL)

Trustee

STATE OF DELAWARE  
NEW CASTLE COUNTY } ss.

BE IT REMEMBERED, that on this 26 day of September, A. D. 1919, personally came before me G. D. HOPKINS, a Notary Public in and for the State and County aforesaid, Pierre S. duPont and H. Rodney Sharp, Trustee, parties to this Supplemental Agreement, known to me personally to be such, and severally acknowledged this Agreement to be their deed.

GIVEN under my hand and seal of office the day and year aforesaid.

(Seal) G. D. HOPKINS  
Notary Public

(Copy)

THIS TRUST AGREEMENT made this 30th day of November, A. D. 1918, by and between PIERRE S. DUPONT, of the City of Wilmington, County of New Castle and State of Delaware, of the first part, and H. RODNEY SHARP, of said City, County and State, of the second part.

WITNESSETH:

THAT WHEREAS, the said Pierre S. duPont is desirous of providing funds for the construction and outfitting of a building to be erected on the grounds of the Chester County Hospital of West Chester, in the County of Chester and Commonwealth of Pennsylvania, said building to be used in connection with and to form a part of the buildings now owned and occupied by said Chester County Hospital, and to be erected to and designated as a memorial to Lewes A. Mason, deceased; and

WHEREAS, the said Pierre S. duPont to this end desires to provide funds in the amount of Three Hundred Thousand Dollars, (\$300,000) at the times and according to the terms hereinafter set forth:

Now, THEREFORE, in consideration of the sum of One Dollar (\$1.00), by the said party of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the party of the first part has bargained, sold, assigned, transferred, set over and delivered unto and by these presents does bargain, sell, assign, transfer, set over and deliver unto the party of the second part the following described personal property, to-wit: ten thousand (10,000) shares of the common capital stock of E. I. duPont deNemours and Company, a corporation organized and existing under the laws of the State of Delaware, as evidenced by certificate number E. 11706 in trust nevertheless for the following purposes and subject to the following provisions, viz:—

ARTICLE I. The said trustee shall collect and receive all dividends, income, profits, gains and benefits arising from said shares of stock or from any other securities which may be substituted for said shares as hereinafter provided, and from time to time as said income, dividends, gains and profits shall accrue, to pay over the same to the Treasurer of the said Chester County Hospital in payment of duly approved vouchers covering the whole or any part of the cost connected with or incident to the constructing and outfitting of the aforesaid hospital building.

ARTICLE II The said trustee shall have the power and authority solely in his discretion to exchange said ten thousand (10,000) shares of the common capital stock of E. I. duPont deNemours and Company for other securities or to sell the same and reinvest the proceeds in other securities, such reinvestments to be subject to all the terms and conditions of this trust.

ARTICLE III Upon the death, incapacity or refusal to act of the said Trustee, Lammot duPont, of Christiana Hundred, New Castle County, State of Delaware, and Irene duPont, of Christiana Hundred, New Castle County, State of Delaware, in the order named, are hereby ap-

pointed to the trusteeship with all the powers and subject to all the conditions, restrictions and limitations of this trust.

ARTICLE IV (a) This trust is founded upon the express condition that all payments made on account of the construction or outfitting of said hospital building or in connection therewith, shall be in accordance with plans which have the approval of the party of the first part. Such payments shall be made by the trustee entirely in his discretion, and there shall be no liability upon him for the application, misapplication or non-application of the funds for the construction and outfitting of said hospital building. It is, however, specifically provided that no vouchers shall be paid unless same shall be approved by the trustees of the Chester County Hospital or their agent.

(b) When the total payments made by the trustee as aforesaid shall aggregate the sum of Three Hundred Thousand Dollars (\$300,000), the principal trust-fund and any income, profits or benefits remaining in the hands of the trustee, cash or otherwise, shall be returned to the party of the first part or to the legal representative of his estate.

(c) If the said hospital building shall be constructed and outfitted at a cost less than Three Hundred Thousand Dollars (\$300,000), the trustee shall turn over the difference between this sum and Three Hundred Thousand Dollars (\$300,000), to the trustees of the Chester County Hospital, the same to be invested by them as endowment fund, the income from which to be available for the maintenance of said hospital.

(d) In the event that the income from this trust-fund is insufficient to speedily meet the payments due for the construction and outfitting of said hospital building, the trustee is hereby empowered to borrow such sums as may be necessary to meet these payments, pledging all or any part of the trust-fund as collateral to secure such loan or

loans, and he shall further in his discretion be empowered to sell a portion of the trust-fund to meet such payments.

IN CONSIDERATION of the premises and the mutual promises and covenants hereinbefore promised to be kept and performed, the party of the second part hereby accepts the within trust, subject to all the conditions, restrictions and limitations thereunto belonging or in any wise appertaining, and hereby expressly covenants and agrees that he will in all things faithfully discharge the duties of trustee as aforesaid.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year hereinbefore written.

Signed, sealed and delivered  
in the presence of:

RALPH T. ELLIS

PIERRE S. DUPONT (SEAL)

H. RODNEY SHARP (SEAL)

STATE OF DELAWARE  
NEW CASTLE COUNTY } ss.

BE IT REMEMBERED, that on this 30th day of November, A. D. 1918, personally came before me, G. D. Hopkins, a Notary Public in and for the State and County aforesaid, Pierre S. duPont and H. Rodney Sharp, parties to this Indenture, known to me personally to be such, and severally acknowledged this Indenture to be their deed.

GIVEN under my hand and seal of office the day and year aforesaid.

G. DARE HOPKINS  
Notary Public

**EXHIBIT "P."**

**DEED OF TRUST**

for

**DELAWARE SCHOOL AUXILIARY FUND**

**THIS AGREEMENT** made this 29th day of July A. D. 1919, by and between Pierre S. duPont of the City of Wilmington, County of New Castle and State of Delaware, of the first part and Irene duPont of the County of New Castle, State of Delaware, John J. Raskob and William Winder Laird, of the County and State aforesaid, parties of the second part.

**WITNESSETH:**

**WHEREAS**, said Pierre S. duPont desires to assist in improving the free public schools of the State of Delaware and is willing to provide funds in the amount of Two Million Dollars (\$2,000,000) towards the payment of part of the cost of ample, appropriate and suitable school grounds, school buildings and the equipment thereof.

**AND WHEREAS**, the Delaware School Auxiliary Association, a corporation of the State of Delaware, is empowered, inter alia, as follows:

"As the beneficiary or cestui que trust to be named in a Trust Agreement, thereafter to be made, between Pierre S. duPont of the one part, and Irene duPont, John J. Raskob and William Winder Laird, Trustees, of the other part, (under which Trust Agreement Two Million Dollars will become payable to this corporation or to other beneficiaries as therein provided) to demand, receive, sue for, recover and compel the payment of all sums of money due and payable to 'Delaware School Auxiliary Association', a corporation of the State of Delaware, under the said Trust Agreement."

*Exhibit "P" of Stipulation of Facts*

"To join in and enter into contracts made by the County School Boards in Delaware and by the Boards of Education of Special School Districts accepting the 'Delaware School Code of 1919' or by their duly authorized officers and agents, which provide for any of the following: the construction of new school buildings; the remodeling of old school buildings; furnishing appropriate fixtures and equipment for school buildings; purchasing playgrounds, school grounds and school sites; whereby this corporation shall undertake and become bound to pay and thereafter shall pay part of the amount of money agreed to be paid by said Boards under said contracts."

AND WHEREAS, said Pierre S. duPont proposes to transfer securities to the Trustees hereinbefore named, to hold the same for four years, so that the aggregate income from said securities or from other securities exchanged therefor, together with any sums of money realized from the sale or pledge of securities, will aggregate during said period of four years, the total sum of Two Million Dollars (\$2,000,000).

AND WHEREAS, for the better understanding of this Trust Agreement certain of its terms are specifically defined as follows:

"Principal Trust Fund" means the securities transferred by said Pierre S. duPont to the Trustees under this Trust Agreement, whether the original securities or other securities added to such original securities or exchanged or substituted therefor.

"Income" means all dividends, income, profits, gains and benefits arising from the "Principal Trust Fund" and all sums of money realized from Pledging or selling parts of said "Principal Trust Fund", in order to obtain Two Million Dollars for the purpose of this trust.

"Trustees" means the trustees named in this Trust Agreement or any successors of such Trustees.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), by the said parties of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the party of the first part has bargained, sold, assigned, transferred, set over and delivered unto, and by these presents does bargain, sell, assign, transfer, set over and deliver unto the parties of the second part, the following described personal property, to wit:

SHARES	CLASS	COMPANY
14,000	Com.	E. I. duPont de Nemours & Co.
6,000	Com.	General Motors Corporation
2,500	Com.	United Fruit Company
500	Cap'l.	United Cigar Stores

ARTICLE I. The said Trustees shall hold the "Principal Trust Fund" for a period of four years or for such other period as may be necessary, until the Trustees shall obtain in the aggregate Two Million Dollars (\$2,000,000) as "Income" and upon the expiration of said period of four years, the said Trustees shall bargain, sell, assign, transfer, set over and deliver said "Principal Trust Fund" and any other securities or money in their hands, outside of said fund of Two Million Dollars (\$2,000,000) to said party of the first part or to the legal representative of his estate.

ARTICLE II. The said Trustees shall have the power and authority solely in their discretion, to exchange all or any part of the personal property and securities herein above specifically set out for other securities, or to sell the same and reinvest the proceeds in other securities, such reinvestments to be subject to all the terms and conditions of this Trust.

ARTICLE III. The said Trustees shall administer the Trust relating to said "Income" as provided in this Trust Agreement for a period of seven years, unless said "Income" shall be exhausted at an earlier date, and upon the expiration of said period of seven years, said Trustees shall

assign, transfer, pay over and deliver any part of said "Income" then remaining unadministered in their hands to Delaware College, an Educational corporation of the state of Delaware.

ARTICLE IV. The said Trustees shall have the power and authority to raise money not exceeding in amount Five Hundred Thousand Dollars (\$500,000) towards said sum of Two Million Dollars (\$2,000,000) by selling part of said "Principal Trust Fund" and by borrowing sums of money by pledging part of said "Principal Trust Fund".

ARTICLE V. The said Trustees shall collect and receive said "Income" aggregating Two Million Dollars (\$2,000,000) and from time to time, during said period of seven years, shall pay over said "Income" to Delaware School Auxiliary Association, a corporation of the State of Delaware, in sums of money as follows:

(1) The said Trustees shall pay over sums of money to said Delaware School Auxiliary Association upon the written order of its President and Secretary, or upon the written order of any two of the officers or trustees of said association, stating that such money is necessary to enable Delaware School Auxiliary Association to meet its obligations as a party to contracts made by County School Boards in Delaware, or by Boards of Education of Special School Districts accepting "Delaware School Code of 1919" and that further stating that such contracts provide for one or more of the following: the construction of new school buildings; the remodeling of old school buildings; furnishing appropriate fixtures and equipment for school buildings, playgrounds, school grounds or school sites.

(2) The said Trustees shall pay over sums of money to said Delaware School Auxiliary Association upon the written order of its President and Secretary, or upon the written order of any two of the officers or trustees of said

association, stating that it was necessary to expend the particular sum of money requested in said order for either of the following objects:

To direct and develop public sentiment in support of public education in Delaware; and the need of new school grounds, buildings and equipment.

To conduct investigations relating to the educational needs of the State and the means of improving educational conditions.

The said Trustees shall not be liable for the application, mis-application or non-application of the sums of money so paid as above.

ARTICLE VI. It is hereby expressly covenanted and agreed that the due administration, performance and execution of the Trust created by this Trust Agreement shall not require the joint action of all three Trustees, but that the joint action of any two of said Trustees shall in all cases be lawful and sufficient.

ARTICLE VII. Upon the death, incapacity or refusal to act of any of said Trustees, Laniot duPont of Christiana Hundred, New Castle County and State of Delaware and H. Rodney Sharp of the City of Wilmington and State of Delaware, in order named, are hereby appointed to the Trusteeship, with all the powers and subject to all the conditions, restrictions and limitations of this Trust.

IN CONSIDERATION OF THE PREMISES and the mutual promises and covenants hereinbefore promised to be kept and performed, the parties of the second part hereby accept the within trust, subject to all the conditions, restrictions and limitations thereunto belonging, or in any wise appertaining, and hereby expressly covenant and agree that they will in all things faithfully discharge the duties as Trustee aforesaid.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year hereinbefore written.

Signed, sealed and delivered in the presence of:

F. A. McHugh as to	Pierre S. duPont	(SEAL)
P. S. duPont		
Sophie E. Baird	Irenee duPont	(SEAL)
F. A. McHugh as to	John J. Raskob	(SEAL)
J. J. Raskob		
Ralph T. Ellis as to	William Winder Laird	(SEAL)

STATE OF DELAWARE }  
NEW CASTLE COUNTY } ss.

BE IT REMEMBERED that on this first day of August A.D. 1919, personally came before me, G. D. Hopkins, a Notary Public for the State of Delaware, Pierre S. duPont, Irene duPont, John J. Raskob and William Winder Laird, parties to this indenture, known to me personally to be such, and severally acknowledged this Indenture to be their Deed.

GIVEN under my hand and seal of office the day and year aforesaid.

G. D. HOPKINS,  
Notary Public (SEAL).

EXHIBIT "Q."

IRÉNÉE DU PONT  
Wilmington  
Delaware

March 10, 1921.

Mr. P. S. duPont,  
Building.

Dear Pierre:

After your talk with me on the subject of your embarrassment with regard to the sale of 1000 shares duPont stock to each of the Executive Committee at \$320. a share, which sale has proven (on paper at least) very disadvantageous to the Committeemen, and knowing that some of these men are materially disturbed over their financial situation, I outlined Plan "B" attached, and have discussed it with Lamot, Bill Spruance and Walter Carpenter, particularly to determine whether the Committeemen would take the position that no adjustment could be honorably made by them, in that it would put them in the position of squealing because they had made a bad bargain.

I feel sure that their feeling was that it would be unethical for them to ask for a modification of the contract but have argued that where two partners make an agreement which becomes distasteful to both sides, it is clearly good sense and good business to modify the contract to some mutually desirable form, and I now feel sure that all would assent to a modification if they felt sure that it came from you, and that the modification would eliminate embarrassment which you might have in the matter.

Apart from this, I am confident that it is unfortunate that a number of our important men have a financial worry on their hands to distract them, however little, from applying their utmost energy on the company's affairs.

It may seem rather "cheeky" of me to suggest Plans "C" and "D", which were evolved in discussion with Lamot and Spruance, largely to effect a net result which Spruance had in mind; to wit, that if the bargain, including the

extra compensation, had never been made his mind would be more free from worry and he would be in the best possible condition to give all his time and thought to the company's affairs. He mentioned that in going into the proposition he only did so to keep with the crowd, but desirous that his peace of mind be not disturbed, either by loss on the one hand or profits which "he did not deserve" on the other. Bill is peculiar in his desire to avoid all types of speculation, and I recall that he was rather loath to enter into the original arrangement and feel sure he only did so to avoid appearing to show lack of faith in the company.

Consideration of this matter for all members of the Executive Committee may solve the problem put up to me by the Finance Committee in finding a solution in Don Brown's case. If he is in the same temper as Spruance the problem would be eliminated by the same treatment. If he desires a speculation in General Motors, that could be arranged in place of purchase of Christiana Securities stock under Plan "B".

I have invited Dr. and Mrs. Eyde to go down to Hot Springs with me for the first half of next week. I hope that they will not accept, but feel that I am under a considerable obligation to them for the many kindnesses while Irene was sick in Norway, and feel that it is up to me to do something.

Your affectionate brother,

IRÉNÉE DU PONT.

IduP/R

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**SITUATION "A"**

Each Executive Committee member purchased 1,000 shares duPont Common at \$320. The duPont Company loaned each \$320,000. at 5% due December 31, 1924. The duPont Company agreed to pay as extra compensation, under certain conditions outlined in the contract, \$150,000 on December 31, 1924.

Stock dividends received on the 1000 shares, three at 2½% each, have increased the number of shares to, say, 1076. The present market price of the stock is 140., making the worth of the collateral \$150,640. Each Executive Committeeman has lodged \$150,000. insurance as an additional collateral. The present worth of the policy is negligible.

Assuming that each continues his employment during the full term, and the note is reduced by \$150,000. thereby, still

the collateral is <sup>^</sup>insufficient. If such employment is not completed, the collateral is very insufficient.

From the Committeemen's point of view, each has made a bad bargain.

From the Company's point of view, the bargain was a bad one, because certainly a majority of the Committeemen are more or less disturbed over their financial condition which shows a paper loss of \$169,360., neglecting interest which has exceeded cash dividends received.

The seller of the stock to the Committeemen, being of the nature of a senior partner in the enterprise, is disturbed from having been inadvertently placed in a position of profiting at the expense of his junior partners.

As possible revisions of the arrangement, the following have been suggested:

**SITUATION "B"**

Have the duPont Company offer to each Committeeman to accept a note due December 31, 1924 for \$150,000. without interest, provided he will liquidate in cash the balance of his indebtedness forthwith, in which case the duPont Company will return to the borrower the duPont Common stock which he has placed as collateral on his present note, retaining as the only security for the payment of the note—

1. The insurance policy already in its possession,
2. As assignment, if need be, of any interest he may have in the \$150,000. contingent compensation payment.

The Christiana Securities Company offer to purchase from each Executive Committeeman the 1076 shares of duPont stock, paying therefor an amount equal to the difference between the original cost, \$320,000., and the \$150,000. note, say, \$170,000., plus an amount which equals the excess of interest paid the duPont Company over the cash dividends received on the stock during the period when the Executive Committeemen held the same, provided that at the same time the Executive Committeeman purchase from the Christiana Securities Company new stock of that company to the extent of 200 shares at \$400. per share, paying therefor with his note for \$80,000. at 6% interest due December 31, 1924 and lodging as security for the payment thereof, the stock so purchased plus an additional amount of 200 shares referred to below.

**Christiana**

P. S. duPont to give 200 shares duPont Securities stock to each member which, assuming that duPont stock is worth \$156. a share, is the equivalent of return of \$80,000. of paper profit which he made from the original transaction.

**SITUATION "C"**

Mr. P. S. duPont, with or without others give to each Executive Committeeman 400 shares Christiana Securities Company stock which, if duPont stock is worth \$156., is the equivalent of a gift of \$160,000., representing approximately the paper profit which he obtained from the original transaction, each Committeeman to lodge this additional 400 shares as collateral on his note with the duPont Company which would make the collateral reasonably ample to cover the loan.

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**SITUATION "D"**

Proceed as per "C" with the addition that it would be provided that Committeemen desirous of not speculating in the securities at the attractive price which would then result, would authorize the duPont Company to sell to the Christiana Securities Company the securities held as collateral for the net amount of the note and, at the same time, cancelling that clause of their employment agreement by which they are paid extra compensation for the five years ending December 31, 1924.

March 9, 1921.

**EXECUTIVE COMMITTEE:—**

In December 1919 you entered into a contract under which you were to receive extra compensation from the DuPont Co. provided you remained five years in a position with the DuPont Company, outlined in that contract, and at the same time acquired 1000 shares of DuPont common stock.

We look upon the stock purchase phase of this contract as an agreement between partners. We consider it very different from a cold-blooded contract with an outsider. It is to our personal advantage that junior partners should not be embarrassed and distracted in the performance of their duties by reason of an arrangement made between partners

which proved disadvantageous to both, due to unforeseen contingencies.

We think the time opportune for changing this agreement between partners and contingent on the liquidation of the purchase of the shares of DuPont stock above referred to, we offer to sell you 400 shares stock of the Christiana Securities Co. for \$80,000 taking therefor your note @ 6%.

March 9, 1921.

**EXECUTIVE COMMITTEE:—**

You purchased about a year ago 1000 shares of DuPont common. To this there has been added three stock dividends at  $2\frac{1}{2}\%$  each. This is to offer you..... for this block of stock, which amount is arrived at by tak-

& adding  
ing \$170,000 plus the excess of interest carrying charges over

and cash dividends received since you purchased it a little over a year ago. This offer is made with

the understanding that you are about to acquire an interest in this company, which represents approximately the same

at least as much  
are  
equity in the DuPont Company as your stockholdings which we offer to purchase.

CHRISTIANA SECURITIES COMPANY

March 9, 1921.

EXECUTIVE COMMITTEE MEMBERS:—

In view of our shortage of cash, the DuPont Co. makes you the offer that if you will pay your note of December 31, 1919, with interest, to date, we will accept in <sup>part</sup> payment therefor, your note for \$150,000. without interest, due December 31, 1924, secured by an assignment from you that you the extra cash payment be made at that time to you under your employment contract.

E. I. DU PONT DE NEMOURS & Co.

Assets 12/31/20 Christ. Sec. Co. ex. du Pont	
Com. =	5,392,956.90
Add \$4 per share du Pont chain to give market	650,184
	<hr/>
	6,043,130.90
Less depreciation of newspaper stock say	409,414.23
	<hr/>
Adjusted assets other than du Pont stk.	5,633,716.67
Liabilities other than stock & surplus	6,383,716.67
	<hr/>
Excess of Liab. over value of "quick" assets	750,000
= \$10 per share	
Present d. P. stock holdings 197,070 shrs.	
156.04	30,750,000
valued at 160 =	31,531,200
	<hr/>
	410
= per share of capital =	429,416 750,000
less above	10
	<hr/>
Net worth based on \$160 d. P. 400.00 or	

*Exhibit "S" of Stipulation of Facts*

Sell Ex C. each 200 shrs for	80,000	=	720,000
Add as sweetner 200 " "	0		
<hr/>			
Cost & Ex C. for 400	80,000	=	tot 720,000
Int on note @ 8% =	\$4,800		
Income from stock @ \$20 du =	8,000		
<hr/>			
	3,200		
Sec Co pay 170,000 x 9 =	1,530,000		
	3,180		
<hr/>			
	1,650		

**EXHIBIT "R."**

[Omitted here by consent, being reproduced in full in paragraph 24 of the Findings of Fact of the District Court.]

**EXHIBIT "S."**

**THIS AGREEMENT** made this 25th day of October, A. D. 1929, by and between **DELAWARE REALTY AND INVESTMENT COMPANY**, a corporation of the State of Delaware, and **PIERRE S. DU PONT**, of the City of Wilmington, State of Delaware,

**WITNESSETH:**

**WHEREAS** on or about December 23, 1919, Pierre S. duPont sold certain shares of the common stock of E. I. du Pont de Nemours and Company, making delivery thereof in shares of said common stock borrowed for the purpose from Christiana Securities Company, a corporation of the State of Delaware, under an agreement to return said shares so borrowed within ten years from said date; and

**WHEREAS** at the date hereof said Pierre S. duPont, under said agreement with Christiana Securities Company,

is indebted to said Christiana Securities Company in the total amount of 142,212 shares of the Twenty Dollar par value common stock of E. I. du Pont de Nemours and Company, and, while not at this time contemplating the closing of the short sale transaction of December, 1919, desires to return to Christiana Securities Company the amount of shares owing to it in accordance with the provisions of said agreement by borrowing said number of shares elsewhere; and

WHEREAS Delaware Realty and Investment Company is the registered owner of shares of the common stock of E. I. du Pont de Nemours and Company in excess of the number of shares required by Pierre S. duPont, to repay said loan, and, at the request of Pierre S. duPont, is willing, upon the terms and provisions hereinafter set forth, to loan to said Pierre S. duPont the shares needed to repay said loan to Christiana Securities Company:

Now, THEREFORE, in consideration of the premises, it is agreed between the parties hereto as follows:

1. Delaware Realty and Investment Company will loan to Pierre S. duPont one hundred forty-two thousand, two hundred twelve (142,212) shares of the Twenty Dollar par value common stock of E. I. du Pont de Nemours and Company, which said number of shares plus any increase thereof by stock dividend or otherwise, said Pierre S. duPont agrees to return to Delaware Realty and Investment Company in kind, within ten (10) years from the date of this agreement.

2. Currently with the delivery of certificates representing said one hundred forty-two thousand, two hundred twelve (142,212) shares of said common stock, duly endorsed so as to enable said Pierre S. duPont to have the same transferred upon the books of E. I. du Pont de Nemours and Company, said Pierre S. duPont shall deliver to Delaware Realty and Investment Company, together with necessary assignments and powers of attorney

to effectuate the transfer thereof to Delaware Realty and Investment Company, certificates representing seven thousand, three hundred twenty (7,320) shares of the Preferred capital stock and seven thousand, three hundred and twenty (7,320) shares of the Common capital stock of Christiana Securities Company, to be held by Delaware Realty and Investment Company as security for the return of said shares of common stock of E. I. du Pont de Nemours and Company so borrowed.

3. All cash and property dividends declared and paid upon the shares of stock of Christiana Securities Company on deposit as collateral security with Delaware Realty and Investment Company, shall be paid to Pierre S. duPont if, as and when received by Delaware Realty and Investment Company, and an amount equivalent to all cash and property dividends declared and paid on said one hundred forty-two thousand, two hundred twelve (142,212) shares of common stock of E. I. du Pont de Nemours and Company, so borrowed, plus any increase thereof by stock dividend or otherwise, or upon any balance of said shares which may be owing under this agreement to Delaware Realty and Investment Company, as the case may be, shall be paid by Pierre S. duPont to Delaware Realty and Investment Company as and when said dividends are declared and paid by E. I. du Pont de Nemours and Company.

4. In the event of the declaration and payment of a stock dividend or dividends upon the shares of Christiana Securities Company on deposit with Delaware Realty and Investment Company to secure said loan of shares of E. I. du Pont de Nemours and Company, such stock dividend shares shall be deposited by Pierre S. duPont with Delaware Realty and Investment Company, together with assignments and powers of attorney to effectuate the transfer thereof to Delaware Realty and Investment Company, which stock dividend shares shall be held by Delaware Realty and Investment Company as additional security for

the return of said shares of common stock of E. I. du Pont de Nemours and Company so borrowed. In event of the declaration and payment of a stock dividend or dividends upon the shares of common stock of E. I. du Pont de Nemours and Company so borrowed, or upon any balance of said shares which may be owing under this agreement to Delaware Realty and Investment Company, as the case may be, an amount of shares equal to such dividend shares so declared and paid shall, as of the date of payment thereof, become additional liability of Pierre S. duPont to Delaware Realty and Investment Company hereunder, and shall be and become subject to the same terms and conditions of this agreement applicable to the original shares of common stock of E. I. du Pont de Nemours and Company so borrowed.

5. During the existence of this agreement should any rights to subscribe to stock of any kind be issued by Christiana Securities Company on the shares of Christiana Securities Company deposited with Delaware Realty and Investment Company to secure said loan of shares of E. I. du Pont de Nemours and Company, certificates representing such rights to subscribe, if issued in the name of Delaware Realty and Investment Company, shall be promptly assigned and transferred to Pierre S. duPont for disposition in such manner as he may deem proper.

During the existence of this agreement should any rights to subscribe to stock of any kind be issued by E. I. du Pont de Nemours and Company on the shares of common stock of E. I. du Pont de Nemours and Company so borrowed, or upon any balance of such shares which may be owing under this agreement to Delaware Realty and Investment Company, as the case may be, an amount in cash equal to the opening market price of such rights on the date when such rights are issued shall be promptly paid by Pierre S. duPont to Delaware Realty and Investment Company.

6. During the life of this agreement Pierre S. duPont shall have the option to reduce or extinguish his indebtedness to Delaware Realty and Investment Company hereunder by the return to Delaware Realty and Investment Company of the shares owing to it in such amounts and at such times as the said Pierre S. duPont may desire. Upon any such reduction of the indebtedness of shares owing to it, Delaware Realty and Investment Company will, if requested so to do, release to the said Pierre S. duPont such number of shares of Christiana Securities Company on deposit with it to secure said loan as it may determine is not needed or desired to amply secure the return to it of the remainder of said shares owing to it. Upon the delivery to Delaware Realty and Investment Company of certificates representing all shares of common stock of E. I. du Pont de Nemours and Company which shall be owing to Delaware Realty and Investment Company under this agreement, duly endorsed, said Delaware Realty and Investment Company shall return to Pierre S. duPont all shares of Christiana Securities Company on deposit with it to secure said loan of shares of E. I. du Pont de Nemours and Company.

7. Should any lawful tax liability, Federal or State, accrue against and be paid by Delaware Realty and Investment Company, which liability, but for the execution of this agreement, otherwise would not so accrue. Pierre S. duPont agrees, upon being notified thereof, to reimburse Delaware Realty and Investment Company for all such taxes which may be lawfully assessed and paid by Delaware Realty and Investment Company, together with interest and penalties that may be levied or imposed in respect of any such taxes lawfully assessed and paid. Should any taxes of any kind accrue or be levied or assessed against Delaware Realty and Investment Company, which taxes but for the execution of this agreement otherwise would not so accrue or be levied or assessed, and such taxes

in the opinion of Pierre S. duPont are unlawfully assessed or levied, Delaware Realty and Investment Company will, if requested by Pierre S. duPont so to do, contest the validity of such taxes in any manner deemed appropriate by Pierre S. duPont, but at the expense of the said Pierre S. duPont.

8. The provisions of this agreement shall inure to and be binding upon the successors, heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF Delaware Realty and Investment Company has caused these presents to be executed by officers thereunto duly authorized, and sealed with the seal of the corporation, and Pierre S. duPont has hereunto set his hand and seal, this 25th day of October, A. D. 1929.

DELAWARE REALTY AND INVESTMENT COMPANY

By IRÉNÉE DU PONT Y. P.  
PIERRE S. DU PONT (SEAL)

Attest:

HENRY B. DU PONT  
Asst. Secretary.  
FRANK A. McHUGH

Pierre S. du Pont, the plaintiff above named, for the purpose of further maintaining the issues on his part, offered the following testimony and exhibits, to wit:

### OPENING STATEMENT FOR PLAINTIFF.

MR. JAMES S. Y. IVINS: If the Court please, we have today the case of Pierre S. du Pont, plaintiff, against Willard F. Deputy, Collector of Internal Revenue, defendant.

It is a suit for the refund of income taxes for the year 1931, alleged to have been overpaid.

In the pleadings two issues were raised; one of them closed up by stipulation which reduces the issues to one; and indicates to the Court that if the judgment on that one is in favor of the defense, there will still be a judgment of some \$54,000 to be entered in favor of the plaintiff because of the stipulated issue. We ask that this stipulation be filed.

THE COURT: Mr. Morris, you are familiar with it, and have signed the stipulation?

MR. J. J. MORRIS, JR.: Yes, I have, sir.

MR. IVINS: In order to shorten the trial and eliminate the necessity of calling witnesses for the identification of numerous documents, it has been possible for the parties to get together and make a stipulation covering certain formal facts, and identifying all, or a greater part of the documentary evidence; so that it will not be necessary to put witnesses on and identify them. The original of the stipulation is here; and while, of course, the parties have reserved the right to object to these documents, on the ground of immateriality, I think in practically every instance, there may be one or two instances of objection, but practically that is the only objection that will be made.

I think it might be desirable for the Court to have that stipulation before it, as we go through the trial (handing).

THE COURT: Very well.

**MR. IVINS:** This is an action to recover income taxes alleged to have been overpaid for 1931. The collection was based on a deficiency in tax, asserted by the Commissioner of Internal Revenue of \$142,466.79, which was assessed, and in September of 1935, paid with interest of \$29,884.85.

**THE COURT:** What year was that? Please let me have that again.

**MR. IVINS:** For the year 1931. The Commissioner determined this deficiency in 1935, whereupon it was paid and claim for refund was promptly filed, and after the expiration of the six months period this suit was begun, the Commissioner not having acted on the claim for refund.

There were, as I said, originally two issues, but one of them has been disposed of by the first stipulation filed, which entitles the plaintiff to judgment of \$54,439.52 on that item. The balance is in dispute on the second litigated issue. This litigated issue is whether the Commissioner of Internal Revenue acted properly in disallowing a certain deduction from gross income, in a computation of the plaintiff's net income for 1931.

That deduction was of amounts which Mr. du Pont had paid to the Delaware Realty Company, under circumstances that will be developed later on. He owed the Delaware Realty Company a lot of stock, du Pont stock; and I might say that throughout this trial it will probably be easier for all concerned, if we refer to the E. I. du Pont de Nemours Company as the "du Pont Company," as it is the only du Pont Company that comes into this picture.

Mr. du Pont had borrowed or taken stock for the purpose of selling it; and under the contract by which he had borrowed it, he was obliged to pay to the lender the equivalent of any dividends that were declared by the company on the stock during the period of the loan.

The history of the transaction runs away back to 1919. Around the first of May, 1919, Mr. Pierre S. du Pont, the plaintiff, had retired as president of the du Pont Company, and become chairman of the board. At that time he was

directly or indirectly the owner of more than one-sixth of all of the stock of the du Pont Company. He had only a small block of stock directly in his name, I think it was only seventy-four shares; but he was the owner of a very large block of stock of the Christiana Securities Company, which, in turn, was the largest stockholder of the du Pont Company. He also was the grantor and reversioner under two trusts. He had created a trust of 10,000 shares of du Pont stock for the benefit of a charity, the trustee to hold the stock, to collect the dividends until the purpose of the charity had been accomplished. A certain amount of money had been raised for a school and a hospital, and for the return of the corpus of the trust to Mr. du Pont, and he had similarly placed 14,000 shares in another trust; so that he expected the return of 24,000 shares from these trusts within a reasonable period of years, and he also, through his ownership of Christiana Securities Company stock, was greatly interested in the du Pont Company. As I say, he was the largest individual stockholder, equitably.

In the light of the policy that he had more or less adopted for many years before, he believed it desirable to tie into the company the valuable men they had, as employees or executives. During the war, the company had a bonus plan, by which they gave employees bonuses in stock of the company, to make their interest and the company's interest, the same; and they used to pay employees bonuses under that plan, in stock.

After the war, the nature of the du Pont Company's business changed completely. They had been manufacturers of explosives. At the termination of the war, the demand of explosives disappeared; and it was soon decided that they would go into other and different lines of business.

For that purpose it was thought desirable to make sure of retaining the services of nine men, who had been placed in important key positions, and who constituted the executive committee of the corporation.

It was suggested that something be done to make a special bonus plan, to give them a material interest in the

welfare of the company, aside from any salaries they might be drawing, and to hold their services that way, so that they might not go out as competitors; and the suggestion was made about the first of May, by Mr. Pierre S. du Pont to the finance committee of the du Pont Company, that something should be done along this line.

This resulted in the appointment of a special sub-committee of the finance committee, which made inquiries and investigations, and from time to time during the summer reported progress and asked for further time.

At last, in November, the sub-committee brought in a report recommending that the du Pont Company, the corporation, issue 1000 shares of stock to each of those nine executives, and enter into contracts with them for certain salaries, and certain bonuses at the end of five years, if they should remain in the service.

**THE COURT:** Pardon me; each of those nine men to receive 1000 shares of stock of the du Pont Company?

**MR. IVINS:** That is right.

**THE COURT:** You were just coming to the bonus provision, in addition to that?

**MR. IVINS:** Yes. The bonus they were to receive was to be applied in payment of the thousand shares.

The idea was that the stock would be issued to them so that they would be able to vote it; but I think the details of it show that the dividends would be accumulated against the price of it which was charged to them, and their bonus which they would get at the end of five years, would apply against the balance, if it had not been paid in the meantime.

That plan was not accomplished, because counsel advised that under the Delaware law, it would not be proper for the corporation to issue stock for anything but property received, or cash, or services rendered; and this issuance of stock in advance of services rendered was felt improper, so that it appeared they could not carry it out that way.

The question then came up: "What can we do about it?" It was decided that Mr. Pierre S. du Pont, as the largest individual stockholder, and having great material interest in promoting the welfare of the company, and its having been his idea that these executives should be tied up to the company in this way, that he would sell 1000 shares of stock to each, and the company would lend the money to buy it with, they getting the stock as collateral for the loan.

**THE COURT:** Will you restate that to me again?

**MR. IVINS:** Mr. du Pont was to sell them each 1000 shares of stock. In order to pay for it they were to borrow the money from the company, putting up the stock as collateral, and they would also take out life insurance for \$150,000 apiece, which would be the equivalent for the bonus each one would earn for the five-year period as bonuses, to be applied as far as necessary, for payment of the balance that might be due on the stock at the end of five years.

That seemed to be a good scheme; but the only trouble was that Mr. du Pont only had seventy-four shares of stock in his own name. He had 24,000 shares in these trusts that I spoke of, that would be coming back in a year or two, or three years. Nobody could tell exactly, because it depended how fast the company paid dividends; and he had, of course, indirectly, ownership through the Christiana Securities Company, in an enormous block of stock; but he could not get that out of the Christiana Securities Company.

The Christiana Company was not interested in selling du Pont stock; it was buying du Pont stock. That was what it was there for, to own it and hold it.

However, the board of directors of the Christiana Company were satisfied that this plan of making large stockholders of its executives was a good thing for their interest as a stockholder of the du Pont Company; so that they were willing to lend Mr. Pierre S. du Pont 9000 shares of du Pont stock for the purpose of letting him sell it to the nine executives. The Christiana Company lent him 9000

shares, and he posted collateral to secure that loan, the collateral he posted being the stock of the Christiana Company originally, and later on, other collateral was substituted at different times; but he had a collateral loan of 9000 shares of stock.

Under the contract by which he borrowed that stock, he was, of course, to make good to the Christiana Company any dividends that it would have received if it had retained the stock in its own name; and he treated those payments which he had to make to the Christiana Company each year as deductible from his gross income; and whether on the theory that they were the ordinary and necessary expenses of carrying on business; whether he regarded them as rent or interest, it does not appear; because it is just put down among other deductions on the tax returns or lumped in with the interest deduction.

**THE COURT:** The dividends on the stock itself was for the benefit of the nine men, being retained as part of that fund for the nine men, is that correct?

**MR. IVINS:** That is correct; those dividends on the stock. The stock was transferred on the books of the company into the names of those nine men, and the dividend checks were either spent by them or applied to the debt to the company. They had paid Mr. du Pont cash, and now he deducted those payments each year on his income tax return.

For eleven years that was satisfactory to the Government. They raised no point with respect to it. In fact, when the 1931 return, the one with which we are concerned was being audited, the revenue agent not only allowed the deduction for interest, but increased it by some \$80,000, for the taxes that Mr. du Pont had had to pay for the lending company.

Now, I missed a point in there, your Honor.

This first contract with the Christiana Company was for a period of ten years. When those ten years were up, Mr. du Pont had not yet returned the stock to the company.

For reasons of his own, he had decided it was better to let the loan run, and pay equivalent dividends to the company, than it was to acquire the necessary stock to cover it, even though some stock came back to him from the trustees. Apparently at the time he got it back, he had other uses for it, or was not interested in it. He did not close up that indebtedness but let it run until the end of its ten-year period.

Then the question came up—what is to be done? It was decided that he would borrow enough stock from the Delaware Realty Company, which was another holding company, that held a lot of stock in the du Pont Company, and a lot of Christiana stock.

During those ten years the du Pont Company had declared not only cash dividends, which Mr. du Pont had made good to the Christiana Company, but had declared stock dividends. Whenever it declared a stock dividend, of course his obligation to return 9000 shares of stock had to be increased to cover the equivalent of the stock dividend; and each time there was a stock dividend a supplemental contract was signed between Mr. du Pont and the Christiana Company, increasing his liability in stock, and restating it.

So that by 1929, the obligation to return stock, having gone up in almost geometrical progressions, had gone from 9000 shares to 142,000 shares.

Of course, those new shares were not quite as valuable as the old shares had been; but in the aggregate were much more valuable than the original 9000 shares.

Somewhere along in the picture—I do not know the date, or whether it is important—but anyhow, before the transaction with the Delaware Realty Company, the Government had ruled that the payments received by the Christiana Company from Mr. du Pont, were not to be treated as corporate dividends, which would have been exempt from another corporation, but as income from other sources which would be taxable.

So that it appeared that the Christiana Company was on the short end of things, if it had to pay taxes on this money it received; and that the only fair thing was to have Mr. du Pont, if he wanted to keep that account open, also to pay those taxes.

To meet this new contract in 1929, with the Delaware Realty Company, under which he borrowed from the Delaware Company enough du Pont stock to satisfy his obligations to the Christiana Company, he made a new contract with the Delaware Realty Company, providing that he would pay the equivalent of all dividends on that, and furthermore any taxes that the Delaware Realty Company might have to pay by reason of the receipt of those payments.

In 1934, the revenue agent audited Mr. du Pont's return and allowed the deduction of the amount of the dividends that had been paid, and also allowed as deduction \$80,000 owed for the taxes. Now, Mr. du Pont did not claim that on his return, but the revenue agent indicated it was part of the same transaction and allowed it.

**THE COURT:** Prior to that time, preceding the years 1933 and 1932, and so on, Mr. du Pont also had paid that sum which was due by way of income tax, or allegedly due by way of income tax, upon those dividends of du Pont stock; had he claimed them in those years too?

**MR. IVINS:** He had not. He did not claim them until 1934, until the revenue agent pointed out it was a proper claim and allowed it.

The revenue agent's action is a mere recommendation; we do not claim it was final or binding on the Commissioner of Internal Revenue. It was undoubtedly based on the fact that for the eleven previous years, the audits had been closed with those deductions allowed.

Then between the time the revenue agent's report was filed and the time it was finally closed, in the Bureau of Internal Revenue, the Board of Tax Appeals handed down a decision in the Dart case, in which it held that where a

dealer or trader, who sold securities short had paid the equivalent dividends to the people who had lent the stock to be sold, the Board held that he could not deduct those payments from current income for the year in which the income was paid, but should accumulate them until he closed up the transaction by covering the short sales, and then treat them as part of the cost price of closing the transaction.

**THE COURT:** Might I ask you to go over that again, sir?

**MR. IVINS:** In the ordinary short sale—I will try to distinguish our case later—in the ordinary short sale, the man who thinks that speculative stock is likely to go down, sells it first in the hope that he can buy it back cheaper later on; he sells something he does not have. Under the rules of the Stock Exchange and the statutes in most of the states, you are not allowed to sell something you have not got, and make a promise for delivery on an uncertain date in the future.

It has been legislated that way because there was too much plain gambling in what we used to call "bucket shops." So under the rules of the Stock Exchange, if a man sells stock, he has to make delivery the next day.

If I tell my broker to sell 1000 shares of steel for me, I have to supply him with a sufficient margin to satisfy him that he is not going to lose by the transaction, and then he will go on the Exchange and make his offer to sell; and if it is matched by a bid for the same price, he will hand over the ticket for the sale, and he makes delivery. He takes 1000 shares of steel stock out of accounts of some of his other customers. Those customers have margin accounts with him, and any stock he buys for his name, or what we call the "street" name, that is, it is endorsed in blank, so that it is readily negotiable; he borrows that stock from the original owner of it and makes delivery on my sale. Of course, the real owner expects the dividends received on that stock. So the broker credits him with those

dividends and charges them to me. He also credits me with interest on the money he got from the sale of the short stock. He has gone out and sold stock for my account and credited me with the small interest on that money I am lending him, and he is holding his collateral in case the stock goes up or down.

Now, after a time, I may be satisfied with a profit or a loss, and I will instruct him to close the transaction. Whereupon, he goes in the market and buys 1000 shares of stock, which he puts back into the box of the customer from whom he borrowed it, and that customer may not know all that was going on.

When he opens a margin account, he has to consent to that kind of thing with his accounts. So that all the stocks held as collateral in brokers' offices, are subject to just that. In some instances they get the consent of the stockholders, but mostly it is not even known.

Now, in the Dart case, the petitioner was charged with dividends on stock he had sold short, the money being credited to the lenders of that stock, and he deducted the amounts of those charges from his net income in the year in which the charges were made against him.

The Board of Tax Appeals held: "No, that is part of the purchase price of the short stock, and you just add that to the purchase price at which you cover when you close the transaction."

In the light of that Dart decision, and citing it, the Commissioner of Internal Revenue reversed the action of the Collector; and, in effect, overruled what had been done for the previous eleven years and said: "If that is true in the Dart case, then in Mr. du Pont's case, he should not be allowed to deduct this currently, but should accumulate it until he finally closes out the transaction."

Then the Circuit Court of Appeals of the Fourth Circuit reversed the Board in the Dart case, and said that should be a current deduction and not accumulated until the end.

There is also a case in the Second Circuit which goes the other way, but on a slightly different type of transaction.

In that case, the short seller was not a regular trader, and it was just an isolated transaction that began shortly before the end of the year and ended shortly after the end of the year.

The Second Circuit held that there the dividend that had been charged to him should await the closing of the transaction.

**THE COURT:** Let me see if I have the ruling of the Board in the Dart case clear? Under the ruling of the Board in the Dart case, one takes the price, that is, the Board requires him to take the price at which he repurchased the stock, and add to it all sums which he has paid by way of dividends to the person from whom that stock was originally borrowed; and he deducts from that the sale price at the time he made his original short sale, and his profit or loss accordingly?

**MR. IVINS:** Yes.

**THE COURT:** And the Board does not allow the income to be deductible during the current year in which he repays the dividends from whom he, so to speak, borrows the stock, but requires it to be cast up at the time the transaction is closed?

**MR. IVINS:** That is the Board's decision.

**THE COURT:** That was reversed by the Circuit Court of Appeals?

**MR. IVINS:** Yes.

**THE COURT:** And then there was another case in the Second Circuit which went off on slightly different grounds?

**MR. IVINS:** It was different, in that in the Dart case the taxpayer was a trader, doing a large business in stocks, buying and selling; and in the other case, in the Second Circuit, it was an isolated transaction by a man who was

not a regular trader, and it lasted only before the end of the year until shortly after.

We propose to prove that Mr. du Pont was in the business of investing his estate and keeping track of those investments. He had very large and diversified investments in corporate securities; but the great bulk of his estate was in the du Pont Company, either originally or through the Christiana Company. That was the company that was making the earnings on which he was living, and which earnings it was natural to his interest to augment and increase; and in furtherance of his desire to improve that business for his own financial position, he was willing to enter into this transaction.

It had none of the elements of a gift, because the price at which he sold to those nine executives, was certainly as high a price as 9000 shares could have been sold to anybody at that time. The stock of the du Pont Company had not been listed on any exchange. It was all pretty closely held by various members of the du Pont family or their little holding companies; and small amounts were scattered around in the hands of the public; but we find that two or three months before this transaction was consummated, the total number of shares transferred on the books of the company, in a month, would run about around 500 or 600, except for big blocks transferred by one of the du Ponts to a holding company, or to a trustee, or something like that. But eliminating those types of transactions, all the transactions that could have been in the open market, aggregated about 500 or 600 shares a month; and the brokers' accounts, through one brokerage house, Laird & Co., which specialized in the du Pont Company stock, and they could buy those shares there, and their records, we have photostats annexed to the stipulation showing their transaction in that stock, and they showed that the number of shares sold in the stock ran from one share to fifty, but they were all small trades.

Now, the current market at the time this transaction was made, on those tiny little blocks, ran around \$360 to

\$365 a share; but that did not mean that anybody could sell 9000 shares and get that price for it. Nor did it mean that any one could go out and buy 9000 shares and get them for that price, because if an order had been placed with the broker saying, "I want to buy 9000 shares, at whatever you have to pay," he would probably have doubled the price before he got it; and if he said for him to sell, he would probably have pushed the price down to one-third of what it was. That is readily feasible, I think.

The stock itself was very uneasy and unstable on the market at that time. Between the middle of October and middle of November, it jumped 100 points and started down again. Of course those trades were in those little five and ten and twenty share blocks; but when it became time for Mr. du Pont to carry out the ideas that had been involved in borrowing 9000 shares from the Christiana Company, and selling them to the executives, the question arose: "What will be the sale price?"

So we asked the treasurer of the company to make a report on that, and the treasurer figured out the asset value of the stock at \$320 a share, and that report was given to Mr. du Pont, and he gave it to his brother Ireneé, who was president of the company at that time, who handed it around to those nine executives and asked them to look it over and see whether they were in agreement with the price. Everybody was satisfied that was the fair price; so the sale was made at that price, and on December 29th, each one of the nine executives gave his check to Mr. du Pont for the price of 1000 shares at \$320, amounting to \$320,000, which money Mr. du Pont put in the bank.

Then, as I have said, in subsequent years he had to keep paying the equivalent of the dividends; and as the stock mushroomed up, he had to agree to return more stock.

The issues of fact here are very few. It is just a matter of showing some matters that we were not able to stipulate, such as the belief on the part of the parties that the \$320 was a reasonable price, and a few matters of that kind,

and to bring out the history that I have been reciting, except as it appears in the documents.

The documents do not quite tie the whole story together, so that we have to have some little testimony to piece it up; but it will leave us with just the question of law, I believe, as to this—was this deductible, or was it not?

**THE COURT:** That of course includes the question of whether or not the income tax was also deductible which the Delaware Realty Company had to pay, does it not?

**MR. IVINS:** Yes, it would include that too; and of course I won't go into the documents at this time on that hook-up, because they are voluminous and involve several different lines.

**THE COURT:** Mr. Lewis, I should be interested instead of following the usual course of procedure in letting the plaintiff put on his witnesses, I should like to hear the Collector of Internal Revenue in respect to the legal proposition. I think it would facilitate the taking of the testimony.

#### OPENING STATEMENT FOR DEFENDANT.

**MR. T. J. LEWIS, JR.:** If your Honor please, I think that it would be fair to the Court, as well as to Mr. Ivins, to say that the Government appreciates the fairness of his statement. I have not much to add to that, except to refer to this fact which Mr. Ivins inadvertently omitted to mention: Shortly after the transaction in which Mr. du Pont sold to each of those nine executive committeemen 1000 shares of stock, the price of du Pont stock materially decreased; so that instead of conferring a favor upon the committeemen by this transaction, it began to look like they had bought a "pig in a poke," and were going to be very much hurt by it.

Accordingly, the President of the company, Mr. Irene du Pont, wrote to Mr. Pierre du Pont, stating this condition and the concern it was causing both the committeemen on the one hand, and the company on the other.

Whereupon, Mr. Pierre du Pont transferred certain shares of the Christiana Securities Company to each of those executive committeemen for the purpose of making up the apparent loss which they were sustaining on the original transaction. In other words, they bought this stock for \$320,000, for which they had to pay. About two years or a year and a half, it developed that the du Pont stock had so decreased on the market that it was worth maybe \$150,000; so that apparently the committeemen had \$170,000 to pay for which they had nothing.

To take care of that situation, Mr. Pierre du Pont transferred, as I say, those additional shares of Christiana stock, and in making that transfer, he stated in writing the purpose of that transfer, and of the whole transaction.

That was contained in a letter which he addressed, the identical letter which he addressed to each of those committeemen, and which is contained in the stipulation.

I will briefly refer to that Exhibit R. It is a letter dated April 1, 1921, which is addressed, this is particularly, to Mr. W. S. Carpenter, who was one of the nine committeemen.

THE COURT: I have it here.

MR. LEWIS, JR.: The stipulation shows that an identical letter was addressed to each of the other eight members. Mr. du Pont says, referring to the original transaction:

"The object of the transaction was (1) to recognize the good work done by you for the company;

(2) To encourage you in further effort to benefit yourself and other stockholders, by placing you in a position to share in the profits of the company;

(3) To continue the plan of ensuring good management of the company's affairs by enlisting permanently the services of able men through securing for them a personal interest in the company's success, apart from salary compensations."

Now, at the present time, I think it not necessary to read the rest of the letter because I can state briefly that the purport of it is that because those purposes did not seem likely to be accomplished, some adjustments in the original plan would have to be made; and for that purpose, Mr. du Pont was willing to transfer those additional stocks, retaining a right or option to repurchase at any time for \$160,000.

THE COURT: I am not quite clear. Mr. du Pont gave over this additional stock at a stated price?

MR. LEWIS, JR.: He gave it to them with a right in Mr. du Pont, to repurchase, if he so elected. If he did not exercise the option, the stock belonged to them. In the meantime, they were to receive a certain part of the dividends on the second lot of stock he had given to them.

THE COURT: And it was put with collateral on their loan?

MR. LEWIS, JR.: That is right. The importance of that, from the Government point of view, is this: Your Honor has not, I suppose, had occasion specifically to refer to the statute under which this question arises?

THE COURT: No, I have not.

MR. LEWIS, JR.: I think perhaps your Honor will be interested then in seeing what the law says about it. The statute permits certain deductions from gross income. The plaintiff has not very definitely stated under what section of the statute this particular deduction is claimed. There must be some such section, because the law, as established by the Supreme Court is this, that while in determining whether or not an item is to be included in income, a liberal rule in favor of the taxpayer prevails. On the contrary, when the taxpayer is claiming a deduction, he must point to the express statutory right to make the particular deduction which he is claiming.

Now, in view of the fact in this case, your Honor, no reference has been made to any express specific provision

for this particular deduction, and I am somewhat at a loss to refer your Honor to the statute; but so far as I know, there are but three sections under which, by any construction, this particular deduction might be claimed.

The first is found under Section 23-A of the Revenue Act of 1928. That section permits the deduction of expenses, and it provides:

"That all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, travelling expenses, including the entire amount expended for meals and lodging while away from home in the pursuit of the trade or business, and rentals or other payments required to be made as a condition to the continued use or possession for the purposes of trade or business of the property to which the tax payer has not taken or is not taking title, or in which he has no equity . . . ."

The next provision under which this deduction might possibly be claimed, is Section 23-B, which refers to interest, and provides that a taxpayer may deduct all interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities other than obligations of the United States, issued after September 24, 1917, and originally issued and subscribed for by the taxpayer, the interest upon which is wholly exempt from taxation under this title.

**THE COURT:** Will you read that again?

**MR. LEWIS, JR.:** I will read the material part. The latter part is an exception of certain interest in which we are not interested in here, so that the material part is this:

"The tax payer may deduct all interest paid or accrued within the taxable year on indebtedness . . . ."

That is the material provision. The next provision under which the deduction might be possibly claimed, is the provision relating to losses.

In view of the fact that Mr. Ivins in his statement did not contend that this was a loss, it is hardly worth while referring to these sections, because obviously this is not a loss so far. It may turn out as a gain. He may make money when this transfer is over. The transfer is not yet completed; and accordingly, no loss can be taken, because the statute requires that the loss must be sustained. That can not be so. I will read it, your Honor. It is very short:

“In the case of individual losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business, or if incurred in any transaction entered into for profit, though not connected with the trade or business, or property not connected with trade or business, if the loss arises from fires, storms, shipwreck or other casualty, or from . . .”

That makes the thing complete, but it may be too complete.

Now, it is because of the fact that practically there are only two sections under which such deductions as are here claimed might be taken, that the Terbell case, the Second Circuit case to which Mr. Ivins referred, and the Dart case, the Fourth Circuit case, to which he refers, differ.

In the Terbell case, the man who made the supposed short sale was not engaged in any business. This was an isolated transaction. Consequently, to claim the loss at all, he must claim it as interest. I say the loss—I was thinking of something else—to claim the deduction at all, he must claim it as an interest deduction, because interest is deductible regardless of whether it is incurred in trade or business, or in connection with trade or business, or personal matters; but interest is deductible.

However, expense is not deductible under those circumstances. It must be an expense which is directly connected

with, or approximately results from, the conduct of a business.

So that the Dart case turned on the question of whether or not the taxpayer there was engaged in a trade or business, and whether those payments which he made were made in connection with his trade or business; and the Fourth Circuit, disagreeing with the Board, I think, chiefly, on that fact question, allowed the deduction.

Now, we have here, really in the last analysis, that question only: Was this expense which is here claimed as a deduction, an expense which Mr. du Pont incurred directly as a result of his business? Of course, the Government contends it was not.

Now, Mr. Ivins says, or I understood him to say, that Mr. du Pont's business was the business of managing his investments; that he was a man of large affairs; that is undoubtedly true.

Now, if I had been presenting the case for the taxpayer, I should have mentioned to your Honor a ruling which your Circuit Court made some time ago in the Peoples Pittsburgh Trust Company case. In that case your Circuit held that an officer of a corporation was engaged in business when he performed his official duties; that the duties of the officer were his business; and that accordingly, in that case—I can not recall the man's name now, but he was the executive officer of the Crucible Steel Company—and in the course of his duties as such, it became necessary for him to sign and swear to an income tax return, which he did.

The Government for some reason or other thought the return was false, and they indicted him. Now, was that man's name Pugh? I will call him that any way. They indicted Mr. Pugh and he was tried and acquitted.

Now, in the course of that trial, he paid out large sums to the attorneys who defended him; and the question was whether or not those payments could be deducted as a business expense; and your Circuit Court held that they could be, and that they were directly a part of the taxpayer's business; that in the course of his duties as such, it became

necessary for him to file and sign this return; and the payment of the expenses approximately resulted from that act, because an illegal color was, by some one else, ascribed to the thing he did; and it was the outcome of his employment; accordingly, they allowed the deduction.

That was an interesting case and there is another one in the First Circuit, which is similar to that.

Now, after this Third Circuit case was decided, a similar question went to the Supreme Court; and the United States Supreme Court in three cases, at least, held that there was a distinction between the taxpayer's business and the business of the company for whom he was acting; and that a loss which the taxpayer sustained in connection with the promotion of the company's business, was not a loss incurred in the taxpayer's trade or business.

THE COURT: Pardon me, will you state that again? The taxpayer in the particular case that you referred to, the Crucible Steel case, made this return as executive treasurer, or something of that sort, of the Steel Company, did he not?

MR. LEWIS, JR.: That is right.

THE COURT: And thereafter the return was impeached by the United States Government, and a criminal proceeding took place, in which the treasurer was indicted?

MR. LEWIS, JR.: Yes.

THE COURT: And the Third Circuit ruled that he was entitled to deduct that as a business expense?

MR. LEWIS: That is right.

THE COURT: And the Supreme Court reversed it?

MR. LEWIS: No, sir. That case never went any higher; but in other cases, the Supreme Court did make the distinction between an expense which directly and approximately resulted from the taxpayer's business and from the business of the corporation.

I think I can not explain that; but your Honor will undoubtedly read those cases. The reason I am referring to

this is to try to indicate to your Honor the important parts which this evidence will have when it comes before you. I am trying to point out the distinction between an expense connected with the corporation's business and an expense connected with the taxpayer's business.

**THE COURT:** I see your point.

**MR. LEWIS, JR.:** In this case it is our position that the expense undertaken by Mr. du Pont, the transaction into which he entered, was not a part of his duties as chairman of the board of directors of the du Pont Company. It was something entirely extraneous to those duties. It was undertaken for the purpose of benefiting the company's business; and thus indirectly resulting in a profit, or a benefit to Mr. du Pont as a shareholder, and to other shareholders of the du Pont Company. Also we contend that the cost, the proximate cost of these expenditures, was the advancement of the company's business, and that accordingly, it can not be said that this was an expense of Mr. du Pont's business.

Assuming that the Third Circuit is correct in saying that his business is the conduct of the affairs within his employment; assuming that to be true, still in this case, the expense did not approximately result from that employment, as it did in the Pittsburgh Peoples Trust Company case. This was something Mr. du Pont undertook entirely outside his employment, and for the purpose of benefiting immediately the company and its business, to the end that the stockholders might receive greater dividends.

— Right or wrong, that is the Government position on that point.

The other point is the question of interest.

On the question of interest, I take it, it is right well settled that interest is the compensation paid for the loan of money, and is not compensation for the loan of a horse or bonds or stock.

Interest is commonly understood as the amount you pay for the use of money; and that is not this case.

There is only one other thing I want to say, unless your Honor has some further questions, and that is this: That under any ideas of business, there is involved the concept of profit; any transaction in which a taxpayer enters as part of his business, must look ultimately to profit in that transaction.

THE COURT: Recess for five minutes.

(After a short recess.)

MR. LEWIS, JR.: I was about to mention the fact that this transaction was not entered into by Mr. du Pont for the purpose of making profit directly. The transaction was not supposed to get profit indirectly; it was supposed to increase the value of Mr. du Pont's stock.

In that view, it would be a capital expenditure, deductible as Mr. Ivins has explained, when the transaction is closed, provided that the statute permits such a deduction, on the idea that profit is so inextricably mixed up with the idea of business that unless this was entered into for profit, it could not be expense incurred in the business.

I do not know whether it is exactly fair or not to refer to the past practice of the Bureau in a case of this kind; it certainly is immaterial in this case what the Bureau did in 1921 under an entirely different statute, and what it did in 1924 under another statute, and what it did in 1926 under another statute is certainly not material to what is the proper thing to do in 1931 under another statute.

I am not referring to these different statutes; but the fact is they all use the same language, so that, presumably, the interpretation of one would be a correct interpretation of the other.

However that may be, the fact is that these rulings to which Mr. Ivins refers were all made prior to the interpretation placed upon this term of "trader" by the Supreme Court.

The question which your Honor has to decide here is not whether the Bureau was wrong or right in 1921 or 1922, or any other year, except 1931.

The question is: What should be done with these deductions properly in 1931? That question must stand on its own bottom. It must stand upon the proper interpretation of the 1928 Act. It must stand on the facts as there made to appear in this case, and not on facts which may or may not have been disclosed to the Commissioner, when he ruled in other years.

I think the matter is entirely irrelevant; and for that reason, although I have agreed to the stipulation which refers to some taxes paid in 1933, I have agreed to that stipulation with the reservation of my right to object as to the materiality.

I understand the practice of this Court is not to offer the stipulation but file it as a record. That being true, I want to enter now my objection to that portion of the stipulation which refers to taxes paid in 1933, with reference to the income for the year 1932.

**THE COURT:** I am not quite clear. Will you point out the portion of the stipulation to which you refer?

**MR. LEWIS, JR.:** Yes, sir. It is paragraph 17, and it is the last two sentences in that paragraph. The first of these two sentences beginning, "In 1933 the Commissioner of Internal Revenue determined that \$80,000 paid by the plaintiff to the Delaware Realty Company was income to that company." And the last sentence:

"It was income to the said company in that year, and that an additional tax was due thereon, and plaintiff was called upon to, and did, in 1933, reimburse the said company on account of said additional tax in the amount of \$9607.98, together with interest thereon of \$63.98, a total of \$10,271.00."

I am inclined to think that the reference to the year 1931 is a typographical error. The reference should be to 1932.

**THE COURT:** Mr. Ivins, is that an error?

**MR. IVINS:** My understanding is that the payment was made in 1931.

**MR. LEWIS, JR.:** The tax, Mr. Ivins, for 1931, could not be determined until after 1931.

**MR. IVINS:** It was on the 1930 tax income.

**MR. LEWIS, JR.:** We will straighten that out.

**THE COURT:** I understand your point is you deem the statements in these last two sentences of paragraph 17 to be immaterial?

**MR. LEWIS, JR.:** Because it refers to other years other than 1931.

**THE COURT:** And as I understand it, Mr. Ivins' objection is retained by counsel to anything in the stipulation which may prove to be immaterial?

**MR. IVINS:** Surely. I will ask Mr. Lewis if he has any other objections to materiality, because if he has not, we can sail along rapidly.

**MR. LEWIS, JR.:** I do not like to commit myself to that; but so far as I know, I have not. But I reserve my right to change my mind about that. I thank your Honor.

**THE COURT:** Now, shall we proceed with the testimony?

**MR. IVINS:** If your Honor please. In my opening remarks, I seemed to have confused some of my friends, and possibly your Honor got the same impression. I meant to say that these taxes imposed on the Delaware Realty Company were allowed as deductions to the plaintiff, originally by the revenue agent in this year.

**THE COURT:** I so understood.

**MR. IVINS:** I did not mean to intimate what had not had happened to this tax in prior years.

**THE COURT:** I understood that. I understood that was restricted to that one particular year.

**MR. IVINS:** As to the action of the Commissioner of Internal Revenue in the earlier years, it was not my pur-

pose to offer that to this Court as any binding agreement, or any *res adjudicata*, or even a *stare decisis*. That was merely that it is part of the picture of the interpretation of the law.

In the same way, the decision in the Dart case by the Board of Tax Appeals, is not binding on anybody, it has been reversed; but the logic in that opinion is something that the Court is quite at liberty to study; and the fact that an opinion has been signed by a man who is known as a sound jurist, might frequently have more weight than some language signed by another man.

In that way I think it quite fair to advise the Court that this question was not raised against the taxpayer until after the decision in the Dart case. That was the whole purpose of that.

Now, Mr. Irene du Pont.

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### IRENEE DU PONT.

IRENEE DU PONT, was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

MR. IVINS: If the Court please, this is my first case in this jurisdiction. Except in one court in Massachusetts, where the witness had some handrails to hang on, it is the first one in which I have seen the witness stand. I had prepared my interrogatory to keep the chronological order straight, which would involve asking Mr. du Pont a few questions, and, maybe, referring to documents for quite a few minutes, and going back; and it seems it might be a burden on him to have to stand during the time I am doing that. Would it be permissible for him to be seated while not answering questions, your Honor?

THE COURT: Certainly. I think it permissible for him to remain seated while not answering questions. This is

Judge Nields' courtroom, and I follow his rule; and I see no reason why Mr. du Pont should not be seated while not answering questions. I suggest therefore a chair be placed for you.

MR. IVINS: Sit down a few minutes, Mr. du Pont. I want to begin by calling the attention of the Court in order to keep the chronological picture here straight, by referring to the fact that the stipulation shows first a formal matter, who the plaintiff is, his residence here, and that he filed an income tax return for 1931, which is annexed to the stipulation, Exhibit A, thereto. Second, that the defendant is the collector of the internal revenue; and third, the determination by the Commissioner of the deficiency in income tax for the year 1931, and the assessment and payment thereof. Fourth, the filing of the claim for refund, which is also Exhibit B annexed to the stipulation.

Those are formal matters, without which we could not be in court, but there is no dispute about that.

From there on, the language of the stipulation is principally for the purpose of identification of documents, and avoiding the necessity of bringing in witnesses to prove them; but to keep the continuity I would like to call the Court's attention from time to time to various of these documents, and maybe read a little from them as we go along.

By MR. IVINS:

Q. Now, Mr. du Pont, what is your full name and address?

A. Irene du Pont; I live at Granogue in Delaware, but my mailing address is Wilmington, Delaware.

Q. Were you at any time president of the E. I. du Pont de Nemours Company?

A. I was.

Q. Hereafter I will refer to them as the du Pont Company, your Honor.

THE COURT: Yes.

Q. When did you become president?

A. In 1919, April or May.

Q. And about how long were you president?

A. Seven years; I retired in March, 1926.

Q. Prior to becoming president, did you hold any offices with the du Pont Company, or the predecessor corporations merged into that?

A. I did.

Q. For how long?

A. From 1904 to 1919.

Q. Various offices, working up from the bottom?

A. Well, rather—

Q. From near the bottom?

A. Yes.

Q. Prior to 1919, what was the business of the du Pont Company?

A. I think up to 1914, you could say that it was essentially the business of manufacturing explosives, both military and commercial, but largely commercial. In the beginning of the war, in 1914, the military business became very much accentuated, so that it was nearly the entire business; but during that same period, the du Pont Company branched out with the view of having other strings to their bow. They went into the pyroline business, and undertook to go into the dye and paint business and artificial leather business; so that from the period of 1914 to 1919, they were trifling in comparison with the smokeless powder business, and we were getting experience in making an organization. After 1919, the large smokeless powder business died at the end of the war, and we were put to it to broaden the scope of the company's work, and enlarge the new industries we had gone into, as rapidly as we could.

Q. Were you director of the company and chairman of its finance committee in 1919?

A. I was chairman of the executive committee from 1915 to 1919. When I became president, I retired as member of the executive committee. I was vice-president from 1914 to 1919.

Q. On the finance committee?

A. I went on the finance committee, I think in 1915, but I was not chairman. Pierre was chairman in 1915 to 1919, I think.

Q. You still, as president, were ex officio member of that committee from 1919?

A. Not the executive committee.

Q. Not the executive committee, but finance?

A. I am not sure I was. I have forgotten. I think in 1919 that Pierre was chairman of the finance committee, and I was a member of it. He was chairman of the board of directors after he retired as president. That was seventeen years ago.

Q. But you were probably a member?

A. I was a member, sir.

Q. In Section 10 of the stipulation, reference is made to the following men:

Lammot du Pont.

F. Donaldson Brown.

Walter S. Carpenter, Jr.

A. Felix du Pont.

J. B. D. Edge.

C. A. Meade.

Charles A. Patterson.

W. F. Picard.

W. C. Spruance.

Who were those men, or what was their relation to the du Pont Company?

A. Members of the executive committee at the beginning, until April, 1919, or in the spring of 1919.

Q. Were they all the members of the committee?

A. They were all, nine.

Q. They were all members, but were they all the members; that is, were there any other members?

A. There were no others.

Q. What were their duties as members of the executive committee?

A. Lamot du Pont was chairman of the committee, and I think he had general supervising duties, general supervision. The other members had more or less specialties to look after. Mr. Edge supervised the purchasing on behalf of the company; he supervised the company's purchasing department. Mr. Picard supervised the general selling policy. Mr. Patterson was the head of the explosives division, both manufacture and sales, although Picard helped supervise the selling end. Felix du Pont had the nitrocellulose end of the business, which was with regard to the smokeless powder left over, and pyroline made of nitrocellulose. Donaldson Brown was the treasurer. Walter S. Carpenter, Jr., was in charge of the development department, looking up new opportunities of investment and expansion.

Did I cover them all? I am not quite clear.

THE COURT: You omitted Mr. Spruance.

THE WITNESS: He had returned, he had been with the Government, and was put in charge of general manufacturing of all the divisions, a sort of liaison officer.

THE COURT: And Mr. Patterson?

THE WITNESS: Patterson was head of the explosives division.

Q. That is what they were doing respectively in their own offices. Now, as to the executive committee?

A. They met weekly and as a group acted as a composite general manager of the company's affairs. The executive committee comes nearer to it than any other way I can explain it.

MR. IVINS: I offer as Plaintiff's Exhibit 1, and I understand there will be no objection, a certified copy of a memorandum or letter from the files of the finance committee.

THE COURT: Have you any objection, Mr. Lewis?

MR. LEWIS, JR.: Are they the papers you showed me?

MR. IVINS: Yes.

MR. LEWIS, JR.: I have no objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 1.")

MR. IVINS: This is addressed to the finance committee by Pierre S. du Pont, saying:

"I recommend that a committee be appointed to study the question of proper compensation to the members of the new executive committee with the request that this committee investigate methods adopted by other corporations toward the securing and retaining of men in similar valuable positions. The salaries now being paid by the du Pont Company do not seem sufficient to ensure best results for any length of time."

That was signed by the plaintiff.

By MR. IVINS:

Q. Now, Mr. du Pont, can you tell me, if you recall, the circumstances surrounding that letter, at the time of the receipt of that letter?

A. At the time, Pierre retired as president, and we put a new executive committee in, the old executive committee that I had been chairman of, had largely retired, on the theory that sort of due to the spirit of touch-and-go during the War, when decisions had to be made in five minutes without adequate study—we thought it would be a good plan to put in a new group of men who would study things very closely, so that we made a general switch at that time. I think I was the instigator of that idea, and I retired for that cause.

Now, these men were not being compensated very highly with salaries; and we have always felt that it was of importance to compensate very highly, and especially by

some interest in the earnings of the corporation, the principal men. They will think harder and clearer if they have an actual financial interest in the concern. I am satisfied of that in my own mind, and have been for a good many years. Whether that was instigated by Pierre, by that letter, or that was the result of endless conversations we had, and we saw each other every day, I do not know, but we were both of the same mind.

Q. Had the du Pont Company at that time a plan in effect for bonus compensation for employees?

A. Yes, we had a number of years before that, and during the war, when the earnings were very high, and the fund available was liberal; but we were running into a period of unknown earnings, and we knew that the war earnings were dead, and we felt we might get into heavy losses, in the scrapping of the plant, and it would seem that the bonus plan might be utterly inadequate to get the best out of men who had to start from the ground and build up a new industry.

Q. I notice that this letter of June 23, 1919, Exhibit 1, does not refer to employees generally, but to the new members of the executive committee. Is there any special reason why they were entitled to special consideration?

A. I think the key men at the top should be rewarded adequately. That has been the history in other concerns. Andrew Carnegie took his partners in, and either they became millionaires, or they would be fired, but they mostly became millionaires. J. B. Duke told me that in the American Tobacco Company, he arranged that his principal men should receive 25 per cent. of the profits; and when the American Tobacco Company was dissolved, he had sixty-six million dollars divided among the sixty, and it made the American Tobacco Company go pretty well.

MR. IVINS: I would like to offer as Plaintiff's Exhibit 2 to 9, certified copies of minutes from the executive committee's books. These minutes show on June 25th. a resolution was adopted that the chairman ap-

point a committee of one to study the proper method of compensating the members of the executive committee. Mr. Brown was appointed that one.

On July 30, Mr. Brown reported progress and asked for more time. On August 13th he brought in an interim report and asked for more time.

These interim reports do not concern us because they were mostly reports of what had been done by other companies.

On August 27th, a resolution was adopted appointing a sub-committee of three, of which Mr. Brown was chairman, Irene du Pont and Mr. Raskob, the other two members.

On September 10th, Mr. Brown reported progress.

September 24th, Mr. Brown reported progress and got more time. On October 8th, he brought in another interim report which was laid on the table, pending a complete study. On October 29th, he stated that a report would probably be submitted in time for consideration at the next regular meeting. They were getting close to something definite.

**THE WITNESS:** May I interrupt? I think Mr. Ivins referred to these as minutes of the Executive Committee, but they are of the Finance Committee.

**MR. IVINS:** You are right. That should be the finance committee.

**THE COURT:** Admitted as one exhibit.

**MR. IVINS:** I have my numbers of exhibits to run through in my preparation, and if I can retain those numbers, it will be handier.

**THE COURT:** Very well.

(Received in evidence and marked "Plaintiff's Exhibits No. 2 to 9" inclusive.)

**MR. IVINS:** I offer in evidence Plaintiff's Exhibit No. 16, a report dated November 11th, to the finance committee from the sub-committee.

MR. MORRIS: No objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 10.")

MR. IVINS: This plan suggested by the sub-committee to the finance committee contemplated an annual contract. I suppose by that they meant a contract from year to year that could be renewed with each member of the committee fixing his salary, and bonus, based on percentages of net earnings of the company, in excess of certain indicated return of capital, the bonus to be invested in stock of the du Pont Company at current market prices, as that should fluctuate.

It provided that the company would issue 1000 shares of stock, Treasury stock, to each of those men at \$400 a share, to be held in trust for them, and the proposal for the terms of the trust was indicated here. It is not particularly important, because it was not finally carried through; but it shows the reasons and the purpose behind the transaction that followed.

Now, your Honor, I seem to have missed Exhibit No. 11. Now, as Exhibits Nos. 12 and 13, we have some more minutes of the finance committee. We offer as Exhibit 12, minutes of the meeting of November 12, 1919, in which reference is made to the meeting of August 27th; and after full discussion it was moved and carried that the report be referred back to the sub-committee, with the suggestion that consideration be given to the making of a provision for securing the common stock, in event of the death of the beneficiary; in other words, this sub-committee report of November 11th, was sent back for further consideration; and on November 26th, the sub-committee was granted further time. Those are Exhibits 12 and 13.

(Received in evidence and marked "Plaintiff's Exhibits 12 and 13.")

MR. IVINS: Now, this, Mr. Lewis, I do not believe you have seen yet (handing).

MR. LEWIS: In fact I gave it to you. No objection.

MR. IVINS: This we offer as Plaintiff's Exhibit No. 14, your Honor, a letter from the vice-president of the du Pont Company to Mr. Richard V. Lindabury, who was a very prominent corporation lawyer in Newark, at that time, transmitting some proposed contracts, which we do not have but which presumably are along the lines indicated in that report of November 11th, and asked for his opinion thereon.

(Received in evidence and marked "Plaintiff's Exhibit No. 14.")

MR. IVINS: As Plaintiff's Exhibit 15, we offer the reply which was received from Mr. Lindabury, saying that he did not think the plan was sound, because the issuance of stock was in violation of the statutes.

MR. LEWIS: I have no objection to that, if it is merely to show that part of the plan.

MR. IVINS: It is not for the purpose of showing what the law was, but merely for the purpose of showing that the original plan of the Executive Committee was abandoned by reason of Mr. Lindabury's advice, and something else had to be done.

MR. LEWIS: I have no objection to it for that purpose.

THE COURT: Admitted.

(Received in evidence and marked "Plaintiff's Exhibit No. 15.")

MR. IVINS: As Exhibit 16 we offer another minute of the finance committee of December 10, in which Mr. Brown reported progress, and asked for more time. He was almost like a lawyer!

MR. LEWIS: No objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 16.")

MR. IVINS: I call the attention of the Court to paragraph 13 of the stipulation, which shows that the Christiana Securities Corporation was the owner of 183,000 shares of the common stock of the du Pont Company, out of the total of 588,542 outstanding. That latter figure appears in paragraph 12 of the stipulation. Paragraph 13 also shows that the plaintiff owned 29,125 shares of the Christiana stock.

I also call the attention of the Court to the Exhibit E annexed to the stipulation. I understand the defense has no objection.

That is a report made by the treasurer of the Christiana Securities Company to the board of directors there, in which he says:

"The Finance Committee of the E. I. du Pont de Nemours & Company has tentatively approved a plan for interesting the members of its executive committee as substantial partners in the corporation which plan requires nine thousand (9000) shares of common stock. It is not possible to purchase this stock in the market except at what would perhaps be considered exorbitant prices and there is grave doubt as to the legality of issuing nine thousand (9000) shares from the company's unissued stock for this purpose.

"Mr. Pierre S. du Pont is willing to sell nine thousand (9000) shares of common stock of E. I. du Pont de Nemours & Company for the purposes of the plan. As he has no stock it will be necessary for him to sell short, which in turn makes it necessary for him to borrow said stock.

"As the Christiana Securities Company is so deeply interested in any plan that has to do with the success of E. I. du Pont de Nemours & Company in which it is the principal stockholder, I recommend that this Board authorize the officers to endorse and deliver up to nine thousand (9000) shares of common stock of E. I. du Pont de Nemours & Company to Mr. Pierre S.

du Pont as a loan, taking as security from him, 3800 shares of stock of the Christiana Securities Company duly endorsed in blank under such form of agreement as may be approved by our attorney, outlining the facts that said 3800 shares of Christiana Securities Company are held as collateral to a promise of the said Mr. Pierre S. du Pont to return said nine thousand (9000) shares of common stock of E. I. du Pont de Nemours & Company to our Treasury within ten years; . . . ."

That indicates that the time limit of this is to be ten years, and that the dividends on the collateral of 3800 shares would go to Mr. du Pont, and that dividends on the nine thousand shares would be remitted by Mr. du Pont, to the Christiana Securities Company.

By MR. IVINS:

Q. Mr. du Pont, can you corroborate the statements made by the treasurer of the Christiana Securities Company to its board of directors, with respect to these facts that he recited; were those facts as I read them, correct?

A. Your reading was substantially correct as to what happened.

Q. Did the du Pont Company have available for sale to members of the executive committee 9000 shares of common stock other than unissued stock?

A. In 1919, I think not. It had only a few shares, but it had no 9000.

Q. Why did not the du Pont Company purchase the necessary shares in the market?

A. The market was very lean, and it would not take very much to put the price up, and you did not know whether you would get it anyhow; and it is hard to conceive of, because with the stock listed with enormous sales, it seems inconceivable there was difficulty in buying du Pont, but if it was a private transaction, you could get small amounts from Laird & Company, but there was no large trading at all.

Q. When was the du Pont Company stock listed on the New York Stock Exchange?

A. I think the 22d of April or May 22d, 1921.

Q. Before that time was there any brokerage house that was recognized as making a specialty of trading in du Pont stock?

A. Laird & Company, which I have just mentioned, was the recognized house to buy that stock through. The other brokerage houses did some buying and selling, but they acted mostly as brokers, whereas Laird & Company were brokers and dealers and they kept stock of their own.

MR. IVINS: If the Court please, we have in Court, from the records of the du Pont Company, the book which contains the list of all the du Pont Company stockholders and their holdings at the end of December 1919. We also have the custodian of that book, who is prepared to testify that therefrom he has compiled a list of all the stockholders holding 1000 shares or more.

It may be that Mr. Lewis will be willing to stipulate that we can use that list without producing the book or witness, or perhaps he would rather have the witness on the stand.

MR. LEWIS: I have never heard of it before. I have no doubt I shall agree after I have seen it, but I can not do it in the dark. Let it pass. I have no doubt we can. May I reserve my objection, your Honor?

THE COURT: Certainly. I do not see the purpose either.

MR. IVINS: If the Court please, I want to give this to Mr. du Pont, to refresh his recollection, in asking him if there were any other stockholders outside Mr. Pierre du Pont, who would have sold 9000 shares, and if so, why they did not go to them.

THE COURT: I see the significance of it now.

MR. IVINS: We offer in evidence as Plaintiff's Exhibit 16½, a list of stockholders of the du Pont Com-

pany holding 1000 shares or more of common stock on December 31, 1919. This offer is made subject to the reserved right on the part of Mr. Lewis to move to strike it out if we can not satisfy him, or prove to the Court, its accuracy.

THE COURT: Let it be admitted on the terms stated, reserving to Mr. Lewis the right to strike it out if the figures are not in accordance with the terms stated.

(Received as "Plaintiff's Exhibit 16½.")

By MR. IVINS:

Q. Mr. du Pont, I ask you to refresh your memory from this list, and tell us if there were any other stockholders who might have sold 9000 shares of stock?

MR. LEWIS: Just a minute. I understand that that is a summary taken from the stock books of the company; is that right?

MR. IVINS: That is right.

MR. LEWIS, JR.: What possible good then can Mr. du Pont's memory serve as against the records?

MR. IVINS: I should change that question, your Honor. Mr. Lewis is quite right in his objection to the form of the question. I frame the question this way—

Q. Mr. du Pont, we show you a list from the records of the company of stockholders having 1000 shares or more, on which you will probably find some who have more than 9000 shares. I will ask you to tell us if there were any reasons why those indicated there, who had more than 9000 shares, were not approached, rather than Mr. Pierre S. du Pont, for the purpose of finding shares to sell to the executives?

MR. LEWIS, JR.: I object to that. It is perfectly immaterial in this case.

THE COURT: I have some difficulty in seeing the pertinency of that, in so far as it relates to what Mr.

du Pont may be able to testify in respect to it. You have offered a list from which he can refresh his recollection and state from the list the number of the number of large stockholders who might be able to make some loan of stock for the purpose that Mr. Pierre du Pont wanted; but can Mr. du Pont testify completely as to all the circumstances which might have governed the various persons on this list? In other words, is this the best evidence?

MR. MORRIS: And furthermore, I think the point is that Mr. du Pont himself was the one who had done this, and whether somebody else could have done it or not, seems to us entirely immaterial. He has done it, and the legal effect of his having done it is the question for your Honor, and the sole question.

MR. IVINS: I will withdraw the question, your Honor. There won't be any more questions for several minutes, Mr. du Pont:

If the Court please, I wish to call attention at this point to the facts as stipulated, that Mr. du Pont held 29,125 shares out of a total of 75,000 shares of Christiana stock.

Now, Christiana held 183,000 shares of du Pont common. If we take the ratio of 29,125 over 75,000 shares and multiply it by 183,000 shares, it gives a total of 71,065 shares of du Pont, of which the plaintiff was indirectly the owner, through his ownership of Christiana stock.

It also appears from the stipulation, that Mr. du Pont had given 10,000 shares to a trustee for the Chester County Hospital. The trust instrument is annexed to the stipulation, and from that it would appear, after certain payments had been made to the trustee, that the corpus of the stock was to be returned to Mr. du Pont.

Similarly the stipulation shows the deed of trust to the Delaware School Auxiliary Association, the trustees for that organization, and there were 14,000 shares

which in time would come back to him, after the purpose of the trust was satisfied.

So, adding 71,065 shares to 10,000 and 14,000 and 74 shares that stood in his name on the books, it shows us a total of indirect ownership there, or interest in Mr. du Pont of 95,139 shares, which is more than 16 per cent. of the outstanding 588,542 shares of the du Pont Company. So that he was the owner or the indirect owner, and equitably and financially interested in one-sixth of the du Pont Company's stock.

Annexed to the stipulation is Exhibit C, which are the minutes of the special meeting of the board of directors of the Christiana Securities Company, on December 12, 1919, and there, after the formalities a report was received from the treasurer, dated December 11, 1919, advising that the finance committee of the du Pont Company had tentatively approved the plan for interesting the members of the executive committee as substantial partners in the corporation, which plan requires 9000 shares of common stock. It states:

"it is not possible to purchase said stock in the market except at what would perhaps be considered exorbitant prices and that there is grave doubt as to the legality of issuing 9000 shares from the company's unissued stock for this purpose; that Mr. Pierre S. du Pont is willing to sell 9000 shares of the common stock of du Pont Company for the purposes of the plan, and that inasmuch as this company is the principal stockholder in E. I. du Pont de Nemours & Company, and is deeply interested in its success, he recommended that the proper officers be authorized to endorse and deliver up to 9000 shares of common stock of E. I. du Pont de Nemours & Company to Mr. P. S. du Pont, as a loan taken as security from him 3800 shares of stock of the Christiana Securities Company."

It recites pretty much the same thing as in the report itself, which is also in evidence.

The resolution shows that it was moved and carried that the report be accepted and approved, and resolved that the officers, Mr. Irene du Pont, Vice President, and Mr. Raskob, President, were authorized to endorse and to deliver to Mr. du Pont or his nominees, 9000 shares.

That shows how Mr. du Pont got the 9000 shares that were actually delivered.

Now, this is another one you will look at, Mr. Lewis (handing). I offer as Plaintiff's Exhibit No. 17, certified copy of extract from minutes of the finance committee meeting of the du Pont Company of December 15, 1919, in which it shows that the sub-committee reported that various modifications of the proposed contract had been under consideration, but the completed draft was not yet ready, and it asked for time to submit the thing to the legal department. It is just another step in the chain of the picture.

MR. LEWIS, JR.: No objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 17.")

MR. IVINS: We offer as Plaintiff's Exhibit No. 18, the complete minutes of the finance committee meeting of December 16, 1919. A resolution was adopted authorizing the president to say to the members of the finance committee that the finance committee have under consideration the working out of an arrangement with each member of the executive committee, under which, in lieu of their participation in the bonus plan of the company, they will have a definite contract under which they will receive (a) \$30,000 per year salary; (b) \$150,000 at the end of five years if they are still in the employ of the company as members of the executive committee or occupy some other position approved by the finance committee as equivalent thereto; (c) One per cent. (1%) of the annual net earnings of the company received from the capital employed under their direc-

tion after deducting 10 per cent. on the amount of said capital as shown on the books of the company; such additional compensation to be payable in common stock of the corporation at cost if same can be secured at prices which in the opinion of the finance committee seem reasonable, otherwise payable in cash."

"The company will also pay the premiums on a \$150,000 life insurance policy on the life of each member of the executive committee for five years."

There was a further resolution that the contracts be submitted to the stockholders for approval, if the directors determine that that is necessary or advisable. Whether that was done, I do not know.

THE COURT: Any objection, Mr. Lewis?

MR. LEWIS, JR.: No objection.

THE COURT: Admitted without objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 18.")

MR. IVINS: This particular document does not relate to the purchase of the stock, but was a step necessary to put the members of the finance committee in funds to make the stock purchase.

We call the attention of the Court to Exhibit L, which is annexed to the stipulation. That is a letter from Mr. Irene du Pont to the nine members of the executive committee, dated December 20th, 1919. He says:

"Attached is a computation used by P. S. du Pont in arriving at a price for du Pont's common stock for the purpose that I spoke to you about on Thursday last.

"In Pierre's absence, I think it would be well for you to look over this computation and give him the benefit of any criticism which you may have, either concerning the principle of valuing of this stock, as indicated, or in the detail computation of the amount."

Annexed to it are several pages of figures and computations showing that the treasurer of the company worked out a figure of \$320.94 per share as the net asset value of the du Pont common stock.

MR. LEWIS, JR.: Don't you think the record ought to show that these circles, wherever they appear, indicate red figures?

MR. IVINS: In making photostats it is impossible to print in red, so that we have shown circles around where it should be red ink. There are several exhibits where that red circle has been put around.

The figure arrived at by the Treasurer there was \$320.94. The price at which Mr. du Pont actually sold these 9000 shares is shown elsewhere in the stipulation to have been \$320 even per share.

(Here Mr. Irene du Pont resumed the stand.)

By MR. IVINS:

Q. Mr. du Pont, in this letter I have just read, Exhibit L, you said to these members of the executive committee:

"Attached is a computation used by P. S. du Pont in arriving at a price for du Pont common stock for the purpose that I spoke to you about on Thursday last."

Can you identify the purpose that is mentioned in that letter?

A. I took it for granted that in line with my instructions to take it up with the executive committee, and tell them what we proposed to do, I certainly did discuss it with the members of the executive committee at the time.

Q. Now, was this memorandum or letter, and the annexed computations, delivered to the nine members?

A. I presume it was.

Q. Did you consider the price of \$320 a share for the nine thousand shares sold, other than as a fair and reasonable price?

MR. LEWIS, JR.: I object to that.

THE COURT: On what ground, Mr. Lewis?

MR. LEWIS, JR.: On the ground that it is stipulated that this is a closed transaction, that is the price which was used, and that is the way they arrived at it, and it will make no possible difference what this witness thinks was a fair price or ought to be.

THE COURT: Is there any question as to whether or not this was or could possibly be construed as a gift?

MR. LEWIS, JR.: I do not know how you could construe it so; but even so, it would not depend on whether the price of \$320 was reasonable or not, because this record shows, so far as this transaction was concerned, that was the price used, and that is how it was arrived at.

THE COURT: I am inclined to think the question is admissible. I overrule the objection.

MR. LEWIS, JR.: Exception.

THE COURT: Note an exception, please.

A. At the time, it seemed to me to be a reasonable price. I did not put the stock in at ninety cents, because you can not measure prices within 10 per cent. of the closure.

MR. IVINS: I do not have any more questions for several minutes, Mr. du Pont.

THE COURT: Just a moment. This Exhibit L, let me make sure. I understand some of the language on this last page, the reduction, for example, for special depreciation and bad debts, are actually carried into the column on the first page of the exhibit, are they not? In other words, if there had been a previous statement, bad debts, for example, would have been carried at \$1,222,000 (reading) "But since \$500,000 of that is the best estimate procurable at this time, it indicates . . ."

MR. IVINS: Yes. As I understand that, your Honor, the company's books showed reserve for bad debts of \$1,222,000 odd, which really was not regarded as an asset, because they expected the debts to go bad, but at this time they made the estimate and found that probably \$500,000 would be amply sufficient to cover the bad debts; so they are really restoring \$700,000 to available capital.

THE COURT: I see.

MR. IVINS: Now, Exhibit J annexed to the stipulation is a letter from Mr. Irene du Pont to the finance committee, in which he indicates that he has interviewed the individual members of the executive committee in accordance with their action of December 16th, and points out that Mr. P. S. du Pont has made an offer of 1000 shares of common stock to each of the executive committee members. Mr. Irene du Pont recommends to the finance committee that the treasurer be empowered to loan such finance committee \$320,000 for five years, taking as collateral 1000 shares of du Pont common stock, and a life insurance policy for \$150,000 each.

This action, when taken, completed the picture on the executive committee side. They had a new contract for salaries and bonuses.

Now, they were allowed to borrow \$320,000 from the corporation, with which to buy the stock from Mr. du Pont; and they would put that stock in as collateral to the loan, and I suppose they expected out of their earnings and the bonus they would get at the end of the five years, to pay off that loan of \$320,000 apiece.

We do not have the executed contracts between the du Pont Company and the executives that closed this transaction; but the form of those contracts is shown in the minutes of the finance committee, or an extract from the finance committee's records annexed to the stipulation, as Exhibit K.

The Court will note that the stipulation in paragraph 10 states that these contracts were executed between the du Pont Company and the nine members in that form. I do not think it necessary for the Court at this time to burden itself with details of the resolutions and contracts. The general effect of them are as stated several times.

The executives were borrowing \$320,000, and using it to buy stock from Mr. du Pont, repaying the loan over five years.

So we think on the one hand the Christiana Securities Company lending the du Pont stock to Mr. du Pont, and the executives borrowing \$320,000 from their company, and Exhibit D attached to the stipulation is the formal agreement between the plaintiff and the Christiana Company, under which he got the loan of the stock, and promised to make good at the rate the dividends were paid, is sufficient.

Chronologically, the next step was the sale by the plaintiff of these 9000 shares of stock to the nine executives at \$320 a share for cash. That is covered by Section 11 of the stipulation. We do not need to produce any testimony on that. When we put the plaintiff on the stand we will show the date that we got that cash.

By MR. IVINS:

Q. Mr. du Pont, just two more questions. Exhibit Q annexed to the stipulation is a letter from you to Mr. P. S. du Pont. It is the letter of March 10, 1921, that Mr. Lewis referred to in his opening, which I had through oversight not mentioned, although I recited it in the memorandum prepared for the Court. You call the attention of Mr. P. S. du Pont to a talk had on the subject of his embarrassment in regard to the sale of 1000 shares of du Pont stock to each of the executives at \$320 a share, which sale has proven on paper at least very disadvantageous to the committee-men. You point out that they are not the kind of men who

would squeal to get out of a contract that they had entered into with their eyes open, but indicated that you thought it would be for the best interest of everybody concerned, that they should be relieved of their worry, and you annexed thereto some schedules showing different plans for curing the situation.

Now, had any member of the executive committee at that time approached you and expressed concern regarding his financial concern arising out of the transaction?

A. I was aware of the feeling on part of at least two of them that they were very much worried financially; but they did not make any plan or suggestion that I should do anything about that. It was done voluntarily.

Q. It was voluntary on your part?

A. Yes, sir.

MR. IVINS: Thank you, sir. You can cross-examine, Mr. Lewis.

MR. LEWIS, JR.: I believe that with a few minutes consideration, we will agree there is no cross-examination for Mr. du Pont.

THE COURT: All right, suppose you take that. Will you be seated, Mr. du Pont.

MR. LEWIS, JR.: We have no cross-examination.

(Witness excused.)

MR. IVINS: Now Mr. Pierre S. du Pont.

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PIERRE S. DU PONT.

PIERRE S. DU PONT, was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. IVINS:

Q. What is your full name, Mr. du Pont?

A. Pierre S. du Pont.

Q. Are you the plaintiff in this proceeding?

A. Yes.

Q. What is your business or occupation?

A. Looking after my investments, and I am also an officer of the du Pont de Nemours Company.

Q. And was your business the same in 1919?

A. Substantially so. I was a little more active in the du Pont business at that time, but substantially the same thing.

Q. And in 1931?

A. Yes.

Q. What portion of your time do you devote to your investment business?

A. I should think the greater part of my time is looking after investments in general.

MR. LEWIS, JR.: You mean now, or then?

THE WITNESS: At the time.

MR. LEWIS, JR.: In 1919?

THE WITNESS: Yes.

Q. And was that also true in 1931?

MR. LEWIS, JR.: Now?

Q. I will put the same question.

A. Yes, but possibly in a slightly lesser degree.

THE COURT: I do not think the record is quite clear on that point. I think you had better ask the question again, if you will, Mr. Ivins.

Q. The question was—what portion of your time, I mean to indicate in 1919, did you devote in 1919, to your investment business?

A. I should think more or less 50 per cent. at a guess, perhaps.

Q. And what portion of your time did you devote to your investment business in 1931?

MR. LEWIS, JR.: I object to that. I do not see how in the world it could make any difference than in 1931.

MR. IVINS: You are right, Mr. Lewis.

Q. I should have said in 1929.

MR. LEWIS, JR.: I do not see that makes any difference. I object to that. That is the date the new contract with the Delaware Realty Company was made. I object.

MR. IVINS: In 1929, his contract with the Christiana Securities Company ran out, and he had to replace the stock he borrowed from the Christiana Company. He had to get that somewhere. He went to the Delaware Realty Company, and got it there, and he had to make a new contract with the Delaware Realty Company on new terms.

Now, we say that that might put a very different face on things. Even if under some theory it could be said he did not enter into the original transaction for profit when he was forced to close up that original transaction, and had to borrow stock to do it with, he was entering into a new transaction, which may have been for profit or may have been to avoid loss, which is the same thing; and so at that time it may be important what his business was.

THE COURT: I have grave doubt as to its admissibility, but I think in view of the fact that we are sitting here without a jury, I will admit it, and I will save you an exception, Mr. Lewis.

A. I have an office in Wilmington and one in New York, for business purposes. I am practically in one of them, practically every day. I think almost every day some question concerning my personal business comes before me.

Now, as to the amount of time expended, it is difficult to say, but I am there almost every day, and there is almost every day a question comes up of business for me. I maintain an office force for that purpose.

Q. In 1919, did you have an office in Wilmington?

A. In 1919, yes.

Q. And in 1931?

A. In Wilmington, yes.

Q. And when did you have offices in New York which you have just spoken of?

A. Starting about 1920.

Q. How many people did you employ in your office in 1919?

A. It was practically the same number as I have now. I should say seven or eight.

Q. And did they devote their entire time to your business affairs?

A. Yes.

THE COURT: Mr. Ivins, when you ask him the business, you mean his business of handling and taking care of his investments?

MR. IVINS: Yes, I meant to exclude social secretaries, and other people who would be household employees or connections.

Q. Can you tell us, Mr. du Pont, in a general way, how your estate was invested in 1919?

A. I can not give you the percentages, but my largest percentage was in the E. I. du Pont de Nemours Company directly, and through the Christiana Securities Company. I was an owner of a large block of du Pont stock. I also had other investments in securities of different corporations.

Q. And were any of those securities in brokerage accounts?

A. Practically no. There may have been a small brokerage account, but practically no.

Q. Did you change any of your investments in 1919?

A. Yes, I think there are probably quite a number of transactions.

Q. Were you an officer or director of any other corporations besides the du Pont Company and the Christiana Securities Company?

A. I was director of General Motors Corporation at that time, I believe. I was director of the Chatham & Phoenix Bank, and I think the Philadelphia National Bank, and I believe the Bankers Trust Company of New York, about that time.

Q. In these companies in which you served as a director, were you a substantial stockholder?

A. I had stock, especially in General Motors, a very considerable amount of stock.

MR. LEWIS, JR.: I think he ought to say. "A substantial amount of stock" is so very indefinite.

THE COURT: You can clear that up on cross-examination, Mr. Lewis.

Q. In 1931, how were your investments?

MR. LEWIS, JR.: In 1931?

Q. Yes.

MR. LEWIS, JR.: I must object.

THE COURT: I have the same difficulty there, Mr. Ivins, but at the same time, I ruled before that in view of the fact that we were sitting without a jury, I will admit it.

MR. LEWIS, JR.: That was 1929.

THE COURT: You are right. How does 1931 become pertinent here?

MR. IVINS: 1931 is the taxable year. One of the questions is—was this deduction in connection with his business? We have got to know what his business was in 1931. He might have had a business in 1919 which he had gone completely out of, and tried to take a deduction in 1931.

THE COURT: You are offering this for the purpose of exclusion, that is, to show that his business was substantially the same?

MR. IVINS: Yes, and to show that he was in the business of an investor; and from that we make our argument that that is a reasonable expense of that business as an investor.

MR. LEWIS, JR.: Will your Honor hear me on that?

THE COURT: Yes.

MR. LEWIS, JR.: My point is this: It does not make a particle of difference what business Mr. du Pont was in, in 1931, because this expense did not occur in connection with this business, or grow out of his business in 1931. It was occasioned by a transaction which I think was in 1919, which your Honor has ruled on. The thing that occasioned this payment is the only thing we are interested in. It does not make any difference what business Mr. du Pont was in, in 1931, because it did not occasion this payment.

THE COURT: Mr. Ivins, I am inclined to agree with the Government's contention in regard to this, but I am not clear about it, and I will admit it, saving an exception. Proceed, therefore.

By MR. IVINS:

Q. How was your estate invested in 1931; I mean to ask the same question as for 1919, to draw out whether there was any difference?

A. My interest in E. I. du Pont de Nemours was very much less. I was still a large investor in General Motors Corporation, I believe more so than in 1919.

Q. In 1929, at the time that you settled up with the Christiana Securities Company and borrowed du Pont stock from the Delaware Realty Company, were your investments divided up about the same way?

A. My general investments were larger that year than they were in 1931; that is, larger in kind.

MR. LEWIS, JR.: As I understand it, this is taken subject to my objection?

THE COURT: Yes. Let this testimony be taken subject to a general objection by Mr. Lewis, to this whole line, in effect.

MR. IVINS: Certainly.

Q. You had diversified investments but in large part in du Pont and General Motors stocks in 1929?

A. In 1929 I had parted with a large part of my E. I. du Pont de Nemours & Company stock. My interest then was practically all in the Christiana Company, and the General Motors stock at that time was larger than the du Pont interest, I believe.

Q. But the Christiana Company at that time continued to hold du Pont stock?

A. Yes, practically its entire holding was of du Pont stock.

Q. In 1931, were any of your securities in brokerage accounts?

A. I believe nothing whatever.

Q. Did you change any of your investments in 1931?

A. I believe so, yes. There were quite a number of transactions.

Q. Did you change your investments in 1929?

A. Yes, I believe there were more transactions than in 1931.

THE COURT: Mr. Ivins, I do not believe I get the point of your question as to whether or not there was securities in brokerage accounts. What is the point? I do not see the significance of that.

MR. IVINS: It was merely to bring out the fact that he is, or was, in those particular years certainly, regarded as an investor, rather than a speculator or trader.

Q. Were you at any time an officer or employee of the du Pont Company?

A. Yes.

Q. When did you first become connected with that company or its predecessor?

A. In 1890.

Q. And will you tell us the various offices you held in the predecessor companies, and this du Pont Company?

A. I was treasurer in 1902, until almost the time I was made president, which was in 1915. I retired as president in 1919, and became chairman of the board of directors.

Q. Do you still hold that office?

A. I still hold that office, yes.

Q. What has been your policy as one of the high officers of the du Pont Company, with respect to important or valuable employees?

MR. LEWIS, JR.: Just a minute. May I ask the stenographer to read that. (Question repeated as recorded.)

A. The policy of the company which I have always believed in, was to pay the prominent men who were responsible for the conduct of the company's affairs, good salaries, and if possible, have an interest in the company as a stockholding.

Q. Now, did you consider the price of \$320 a share, at which you sold the stock we have been discussing, to the members of the executive committee, to be a reasonable and fair price?

A. I did.

MR. LEWIS, JR.: I object to that, but your Honor rules against me.

THE COURT: The same ruling with respect to that question.

MR. IVINS: I may say this in that connection, your Honor. We had gathered from conferences with the defense, in preparation of the stipulation, and previous conferences in the Bureau of Internal Revenue, that the defense was likely to take a position that this sale at \$320 a share, should be regarded in part, at least, as a

gift, because they asked us at one time to stipulate that the market value of the stock at that time was substantially a higher figure; and it is for that reason that I have developed this evidence, and have no evidence to develop along the line, that the \$320 was a reasonably fair price for a large block of stock; and that the mere fact that very small blocks had been selling at higher prices, would not affect those market figures.

If the defense is willing to state that they have no intention of claiming that this sale was in any part a gift, or the equivalent of a gift, because of the difference between the prices at which the sale was made, or any market price, or any price they might prove, it will save me a lot, and I will drop that line.

MR. LEWIS, JR.: I am sorry I can not make that stipulation.

THE COURT: I have already ruled with respect to that. Proceed.

Q. The question was, Mr. du Pont, did you consider the price of \$320 a share, as a fair price for the stock?

THE COURT: There is an objection and exception. Objection overruled and exception entered.

A. I did.

Q. Did you regard it as less than the fair market value?

THE COURT: I assume that Mr. Lewis's objection goes to this whole line.

MR. LEWIS, JR.: Certainly.

THE WITNESS: Shall I answer that?

Q. Yes.

A. I believe it was the fair market value, yes.

Q. Do you recall having any discussions with any one, or more, of the nine executives to whom the stock was sold, with respect to the price that they were going to pay?

A. I have no recollection of dealing with any of those nine men, either as to price or otherwise, excepting as the deal was finally arranged and the payment was made to me and the stock transferred.

Q. And in the latter part of December, 1919, did you have available 9000 shares of du Pont common stock that you could have delivered?

A. No, I did not.

Q. How many shares did you have that were immediately available?

A. Seventy-four was all I had.

Q. Was that 74 shares the complete extent of your beneficial ownership in the du Pont Company?

MR. LEWIS, JR.: That has all been stipulated.

MR. IVINS: I withdrew it.

THE COURT: Very well.

MR. IVINS: I believe I have sufficiently called the attention of the Court to Exhibits N and O in the stipulation, which are the Chester County Hospital Trust that had 10,000 shares, and the Exhibit P, Delaware Trust, 14,000 shares, and the ownership by Christiana Securities, of common stock.

THE COURT: Yes, I have that in mind.

Q. Mr. du Pont, did any other individual have a greater beneficial ownership in the du Pont Company than you, in 1919?

A. I think I was the largest stockholder.

THE COURT: Just a moment. Is there objection?

MR. LEWIS, JR.: Yes, sir.

THE COURT: I think that objection must be sustained.

MR. IVINS: I think I have covered this point in Mr. Irene du Pont's examination. We had prepared the interrogatory for Mr. Pierre S. du Pont first, and some of the things in there were shifted to the other—

**Q.** Mr. du Pont, it is stipulated that you were paid in cash for the 9000 shares of stock?

**A.** That is correct.

**Q.** Do you recall when you received that payment?

**A.** It was immediately after this transaction was made, in 1919.

**MR. IVINS:** The stipulation contains Exhibits F, G, H and I, your Honor, which are supplemental agreements between Mr. du Pont and the Christiana Securities Company made each time a stock dividend was due, to recognize Mr. du Pont's enlarged obligation for the return of the stock.

The stipulation also contains as Exhibit R, a photostatic copy of a letter from Mr. du Pont to Mr. W. S. Carpenter. He was one of the nine committeemen, and the stipulation indicates that similar letters went to the other eight. It refers back to the letter of March 10, 1921, from Mr. Irene du Pont to Mr. Pierre S. du Pont, which we discussed while Mr. Irene was on the stand, in which it was pointed out that the value of the du Pont stock, having gone down, those executives were disturbed about their financial situation, and Mr. Irene suggested several remedies, possible remedies.

Exhibit R is the resulting letter that Mr. P. S. du Pont wrote direct to the executives. Instead of handing it back from Mr. Irene du Pont, he wrote directly to the executives, and referred to the letter of March 10th, from Mr. Irene du Pont, and made a proposition.

**THE COURT:** Mr. Ivins, it is now exactly 1 o'clock. I would suggest a recess until 2 o'clock.

**MR. MORRIS:** May it please the Court, we were wondering if, during the recess, we might expedite matters somewhat by inquiring if counsel care to indicate whether they have any more testimony. We think perhaps if they will not have any more witnesses, that if your Honor will allow a little longer recess, that during

the recess we may be able to state whether we shall have any testimony, if counsel care to indicate at this time.

MR. IVINS: I am afraid, since I can not be assured that the question of value is not in issue, that I will have to go ahead with my witnesses on that point.

MR. MORRIS: Then we have the usual recess.

THE COURT: The court will recess until 2 o'clock.

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AFTER RECESS.

MR. IVINS: To obviate the necessity of further examination of certain witnesses, Mr. Lewis and I have agreed that Exhibit No. 16½, which was the list of stockholders of du Pont Company holding more than 1000 shares, might be in evidence, with the understanding that we would explain who had control of certain corporations in there, which might conceal the names of the beneficial owners.

The Christiana Securities Company was owned, all the stock thereof, owned by Pierre S. du Pont, Irene du Pont, Lamot du Pont, John S. Raskob, W. S. Carpenter, and several others—

THE WITNESS: I think that is R. B. M. Carpenter.

Q. R. B. M. Carpenter, and there are two du Pont Securities Companies mentioned in this list, the du Pont Securities Company holding 3412 shares, was a new corporation, formed in 1919, and I will ask Mr. du Pont, if you can, tell us who was back of that; do you remember?

A. When I spoke to you before, I thought it was a Securities Company used in connection with the General Motors Corporation, but that was only a few minutes ago. I recollect now that the du Pont Securities Company was organized by the E. I. du Pont de Nemours Company, to deal with certain securities owned by them, and I think this, in 1919, was probably that corporation; but I believe there were no

individual stockholders in that. I think it was entirely a company matter.

**MR. IVINS:** Thank you, sir. As to the other du Pont Securities Company indicated on this list to have 10,818 shares, that was the original name of the Christiana Company. It had been changed early in 1919 to Christiana Securities Company, but the stock records in the du Pont Company, of that block of stock held by it, had not been changed at the end of 1919. The Glendon Land Company was a holding corporation controlled by W. W. Laird, The de Nemours Investment Company was a corporation controlled by Alfred I. du Pont; and the Nobels Explosives Company was a large British corporation. I think that covers them all.

**By MR. IVINS:**

**Q.** Mr. du Pont, the agreement with the Christiana Securities Company, and its supplements, expired by its own terms, on December 1929. Was it renewed or extended?

**A.** It was not renewed. It ended, and the new agreement was formed through the Delaware Realty Company.

**MR. IVINS:** I refer the Court to paragraph 15 of the stipulation, and Exhibit S attached to the stipulation, which is the agreement of October 1929, between the plaintiff and the Delaware Realty and Investment Company. The provisions are similar to those that have been described in the agreements between Mr. du Pont and the Christiana Company, except that in the case of the Delaware Realty Company, he agreed not only to pay the equivalent of dividends declared on du Pont stock, but also any taxes that might be assessed against the Delaware Realty Company on account of the receipt of such moneys.

**THE COURT:** There was not any such provision in that agreement with Christiana, was there, about taxes?

**MR. IVINS:** There was no such provision in the written agreements.

**Q.** Mr. du Pont, did you make good to the Christiana Company, any taxes that they paid, by the payment you had made by this dividend equivalent?

**A.** I believe that was made good after it was declared that the Christiana dividends were not to be accounted as dividends but accounted as interest, because originally the Christiana Company reported those receipts as dividends, non-taxable to the Christiana Company, thereafter the tax board declared they should be considered as interest, and therefore taxable, and I believe after that they made that difference.

**Q.** Even though there was not any written provision in the contract to that effect?

**A.** That is so.

**Q.** Was the agreement with the Delaware Realty and Investment Company still in effect in 1931?

**A.** Yes.

**Q.** Is it still in effect today?

**A.** It is still in effect.

**MR. IVINS:** We offer in evidence as Plaintiff's Exhibit No. 19, the form of agreement, on Form 870. By this agreement the taxpayer waived his right to go to the Board of Tax Appeals with respect to a deficiency asserted of \$142,466.79; but that was without prejudice to his right to file and prosecute a claim for refund. It is so specifically indicated in the waiver.

**THE COURT:** It is admitted without objection.

(Received in evidence and marked "Plaintiff's Exhibit No. 19.")

**MR. IVINS:** As Plaintiff's Exhibit No. 20, we offer the original letter from Deputy Commissioner Russell, to plaintiff, dated September 11, 1935. I have no more questions for you, Mr. du Pont, but I want to get this in before I turn you over for cross-examination.

(Received in evidence and marked "Plaintiff's Exhibit No. 20.")

MR. LEWIS, JR.: May I ask Mr. Ivins what is the purpose of this exhibit?

MR. IVINS: It shows the Commissioner's computation of the deficiency tax and how he arrived at it. It shows the disallowance of the deduction for this payment to the Delaware Realty Company, and ties up the date of that disallowance.

MR. LEWIS, JR.: The material part of the letter is all stipulated. It is stipulated that the taxpayer claimed these allowances with respect to certain payments, and did not claim them as to the others, and the Commissioner disallowed them. It is further stipulated that there is only one issue in this case, namely, the right to make these deductions. I think the exhibit is immaterial and irrelevant, and I object to it.

THE COURT: Mr. Ivins, I do not see the pertinency of the exhibit, in view of your stipulation.

MR. IVINS: I will be frank with the Court. The purpose of this exhibit and others I propose to offer afterwards, which are tied into this exhibit by reference, is because, true to the customary methods of the Bureau of Internal Revenue, they start one re-audit from an old one, and instead of going back to the beginning, to the return figures, they usually go back to the previous audit, or to a Revenue Agent's report, or something like that; so that in order to find out exactly what they have done, it is necessary to examine a string of letters; but my purpose in offering this and the other letters supporting it, is to show that the position of the Bureau of Internal Revenue was originally with respect to this taxable year, that the deductions we have been talking about should be allowed; and that later that position was reversed on the authority of the *Dart* case.

The *Dart* case is cited in the ruling, I believe, in one of those letters. The last letter refers to a previ-

ous one, and the next previous one refers to the Dart case, as their authority for their change of position.

**THE COURT:** That is stipulated, is it not; is not that part of your stipulation?

**MR. IVINS:** The stipulation merely shows that the final determination of the Commissioner disallowed the deduction.

**THE COURT:** Mr. Lewis, how does this hurt you?

**MR. LEWIS, JR.:** It hurts me by making part of this record something which is no part in the world of it. It makes no difference whatsoever why the Commissioner did it, or how many times he has changed his mind. We have stipulated in this record what he finally did. That is the only thing that matters in this law suit.

Now, it is proposed to put in a string of correspondence which may necessitate our putting in letters to explain; and I think it is immaterial and unnecessary.

**THE COURT:** Mr. Ivins, I believe that the issues here, that is, this issue has been sufficiently stipulated to be plainly on the record. I assume it is admitted, is it not, Mr. Lewis, that the reason why the Commissioner reversed himself, was the decision of the Board of Tax Appeals in the Dart case?

**MR. LEWIS, JR.:** That, coupled with certain decisions in the Supreme Court.

**THE COURT:** Yes, coupled with certain decisions in the Supreme Court, and that is admitted by the defendant.

**MR. LEWIS, JR.:** Oh, yes.

**THE COURT:** I do not think this is necessary, Mr. Ivins; I sustain the objection, and I note an exception if you desire it.

MR. IVINS: That will shorten the rest of it up very much.

By MR. IVINS:

Q. I would like to ask Mr. du Pont one other question. In 1929, when you made your first contract referred to here with the Delaware Realty Company, were you a stockholder of that corporation?

A. No.

Q. Have you ever been?

A. Never have been.

MR. IVINS: Thank you. Mr. Lewis, you may have the witness.

CROSS-EXAMINATION BY MR. LEWIS, JR.:

XQ. If the Court please, Mr. du Pont, there is some question in our minds about your statement as to the reference to the positions which you held in 1919. Would you mind repeating for me those, with the several companies you mentioned? You recall you were a director of several companies?

A. I think I was director of the General Motors Corporation, American International, I believe the Bankers Trust, but I am uncertain of that. I think also of the Wilmington Trust Company, and the Philadelphia National Bank, I think I mentioned that. If you want to know to a certainty, I can verify that.

XQ. I think if that is the best of your memory, that is sufficient for us.

A. That is going back a long way in my recollection on a point that is not clear. I will submit a list if you wish. May I say in that regard, I did occupy those positions or thereabouts, but I am not quite sure as to the exact date.

XQ. Did you occupy any other position than that of a director in 1919, with any of those companies?

A. I think not. I was made president of the General Motors Corporation in the latter part of 1920, I think it was but before, I think I was only a director.

**XQ.** Were you on any of the committees of the General Motors in 1919?

**A.** I am not sure about the finance committee. I can look that up if it is material. I became a member of its finance committee shortly after, I think.

**XQ.** That is just before you became president, or shortly before?

**A.** Just about that time. I think I was not before that, but I am not sure of that.

**XQ.** I think, Mr. du Pont, you said that continuously from 1919, until the present time, you were chairman of the board of the company which we have called the du Pont Company in this case; is that correct?

**A.** That is so, yes.

**XQ.** In 1919, did you occupy any other position with the du Pont Company other than chairman of the board?

**A.** I do not know that I got off—I am on the finance committee still, I think I was continually.

**XQ.** That is in 1919?

**A.** Yes, I think it has been continuous since then.

**XQ.** You have not, however, been a member of the executive committee?

**A.** No.

**XQ.** When you became president of the General Motors Company, you still were chairman of the board of the du Pont Company?

**A.** I think I retained that right through, yes.

**XQ.** And in each of those positions, you were paid salaries, were you not?

**A.** Yes.

**XQ.** Would you mind telling us how much the General Motors paid you when you became president?

**A.** \$100,000.

**XQ.** That is a year?

**A.** Yes.

**XQ.** And how much was the du Pont Company then paying you?

A. I think about \$10,000 or \$20,000. The president's salary, when I was president, was \$100,000. I think it was reduced to \$20,000 shortly after that.

XQ. I am afraid I do not quite understand that. You mean when you became chairman of the board, your salary was reduced?

A. Yes, in fact I think there was a lapse of six months when I did not draw any salary. I think it was forgotten. It was made up afterwards, and I am not sure how the record appeared.

MR. LEWIS, JR.: I am glad I was not in your position for those six months!

XQ. Now, comparatively what part of your time in 1921, was devoted to the business of the General Motors Company, as against the time you devoted to the business of the du Pont Company?

A. That is a very difficult question to answer, because my chief interest in the General Motors Corporation was on account of the du Pont Company. The du Pont Company helped finance the General Motors Corporation at that time to a very considerable extent; and it would be very difficult for me to say I represented the du Pont Company and the General Motors, and how far I represented General Motors and myself—it was a very mixed relation.

XQ. Well, your interest then I understand in the General Motors was to have been the promotion of the du Pont interest; the du Pont Company's interest in that business?

A. That was really the reason I was in there as president, yes.

XQ. How long did you continue as president of the General Motors Company, do you recall?

A. I should say until about 1924 or 1925, 1924 probably.

XQ. In 1924 or 1925, what was your—I will put it this way—strike the question—I got mixed up on that one. In 1924 I believe it was that you made a contract for an annuity with the Delaware Realty Company, put it this way, do you recall the incident when you did?

A. Yes.

XQ. That Delaware Realty Company is the same company from whom you later borrowed those 9000 shares of stock, is it not?

A. Yes.

XQ. Coming down to 1929, that is the time, as I understand it, when you changed your borrowing from the Christians to the Delaware Realty Company?

A. Yes.

XQ. What were you doing in that year; I mean by that, you were chairman of the board of the du Pont Company?

A. Yes, and member of the finance committee of the General Motors Company at that time.

XQ. But you were not president?

A. Not president, no.

XQ. But you still retained your interest in the General Motors, and the du Pont Company was heavily interested in the General Motors?

A. Quite heavily, yes.

MR. LEWIS, JR.: I may have one question more—thank you very much, Mr. du Pont. That is all.

(Witness excused.)

MR. IVINS: If the Court please, we have here a copy of the record sheets from the house of Laird & Company, brokers, whom Mr. Irene du Pont said were traders in du Pont stock in 1919, before it was listed on the Stock Exchange, which show their transactions therein from December 1st, 1919, on, for several months. I understand that the Government has no objection to the authenticity of the document, but reserves the right to object to its materiality.

Since we seem unable to eliminate the question of market value of the du Pont stock, at the time the sale was made, for \$320 a share, we offer this not only to show the fluctuations in prices that were going on, but

to show that the sales, at least those handled by those brokers, were all of comparatively very small lots.

**THE COURT:** Have you any objection to this, Mr. Lewis?

**MR. LEWIS, JR.:** I do not know where it came from. There was one stipulated.

**MR. IVINS:** That is the one. You reserved the right to——

**MR. MORRIS:** Is that filed with the Court?

**MR. LEWIS, JR.:** I have not made any objection to it.

**MR. MORRIS:** Counsel makes the suggestion that you have stipulated that so far as its authenticity is concerned, you won't question it, but you reserve the right to dispute its materiality. He now wants to know whether you dispute its materiality; have I stated that correctly, Mr. Ivins?

**MR. LEWIS, JR.:** I reserve the general right, and so I do object to anything mentioned in the stipulation for materiality. I have not objected to this, but I have objected to some other things.

**MR. MORRIS:** You do not object at this time?

**THE COURT:** It is in the stipulation?

**MR. IVINS:** It is in the stipulation. If they are going to object to materiality, I want to get that point raised and disposed of, but apparently they are not; but I propose to call Mr. Ellis for the purpose of showing that he has made a tabulation from the newspapers of that time. We have the newspapers here for check, but he made the tabulation, and I want to put him on the stand and introduce that tabulation.

**RALPH T. ELLIS.**

RALPH T. ELLIS, was called as a witness on behalf of the plaintiff, and having first been first duly sworn, testified as follows:

**DIRECT EXAMINATION BY MR. IVINS:**

Q. Mr. Ellis, your full name is what?

A. Ralph T. Ellis.

Q. And your occupation?

A. Office assistant.

Q. To Mr. Pierre du Pont?

A. To Mr. Pierre du Pont, yes.

Q. I show you a document with pencil marked at the top "Exhibit 24." The title to it is "Quotations taken from bound copy book of newspapers in period October 1, 1919, to December 31, 1919, Every Evening." That is the name of the newspaper, a Wilmington newspaper, "Prices quoted on E. I. du Pont de Nemours Company common stock." I ask you if you compiled that?

A. I did.

Q. Where did you get the figures that are shown there?

A. With the dates indicated here, from the bound copy of *Every Evening*, from the Wilmington Public Library.

Q. Have you that bound copy here in court?

A. Yes, the book is here.

THE COURT: The tabulation has already been introduced as an exhibit; is that correct?

MR. IVINS: No; I am about to introduce it. I have marked Exhibit 24 on it.

Now, if the Court please, I offer as Plaintiff's Exhibit 21, the document just described by Mr. Ellis.

(Received in evidence and marked "Plaintiff's Exhibit No. 21.")

MR. LEWIS, JR.: If the Court please, the document, of course, is not properly authenticated for admission; but if counsel will ask the witness whether or not

*Every Evening* is a paper relied upon by the brokerage trade, to establish the prices (I do not know whether it is or not), I would like it properly authenticated.

MR. IVINS: I shall be glad to let you cross-examine.

MR. LEWIS, JR.: I will object unless you authenticate the source.

By MR. IVINS:

Q. Mr. Ellis, how many evening papers were published in Wilmington in 1919?

A. Two that I know of.

Q. What was the position held by *Every Evening*; was it that of a larger or smaller circulation?

A. *Every Evening* and the other evening paper were both about alike.

Q. Do you know whether the other evening paper carried stock quotations?

A. It did carry stock quotations.

Q. You did not refer to that other paper?

A. To the other paper?

Q. Yes.

A. No.

Q. You have not checked against that paper?

A. No.

Q. But *Every Evening*, the paper from which you copied this, carried New York Stock Market quotations?

A. New York Stock Market quotations, yes.

Q. And the Curb Market?

A. And the Curb Market.

Q. And it had on each day special little block for powder stocks?

A. It did.

Q. And these figures came out of the powder stock block?

A. I took them out of there.

Q. Except in the Wilmington papers, have you been able to find any regular day-to-day quotations of du Pont in the latter part of 1919, before it was listed?

A. I have not.

Q. Did you examine the files of New York papers for that?

A. I could not locate any in the New York papers that far back.

THE COURT: Do you renew your objection, Mr. Lewis? I conceive it is not fully proper to make proof of this issue, but now perhaps Mr. Ellis has not come within the technical requirements, but he can very readily do so by producing the actual papers themselves and putting them in evidence; but do you want to insist on that technical point?

MR. LEWIS, JR.: That is not the point of my objection.

THE COURT: Then I do not understand the point of your objection.

MR. LEWIS, JR.: My point is that a paper giving quotations must be shown to be a paper relied upon by those who buy and sell stocks before being admissible. I think it is very clear. I have not any objection if Mr. Ivins will assure me that this is such a paper. I simply know nothing about it.

THE COURT: I may say this, on my own knowledge, not my judicial knowledge, but my personal knowledge is that this paper was used in that period, I can assure you of that, Mr. Lewis.

MR. LEWIS, JR.: With your Honor's assurance, there is no objection.

THE COURT: That is correct.

MR. IVINS: That is all. Any cross-examination?

MR. LEWIS, JR.: No cross-examination.

(Witness excused.)

MR. IVINS: Now, Mr. Fisher.

**MERRETT D. FISHER.**

**MERRETT D. FISHER**, was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

**DIRECT EXAMINATION BY MR. IVINS:**

Q. Your name is Merrett D. Fisher?

A. Yes, sir.

Q. You are secretary of the finance committee of the du Pont Company?

A. Yes.

Q. And you have custody of the records of the finance committee?

A. Yes.

Q. Have you brought here the records from the files of that committee, which show the transfers that were made in October, November and December, 1919, and January, 1920, of the common stock of the du Pont Company?

A. Yes.

Q. Can you tell me from those records how many shares of du Pont common stock were transferred on the books of the company, and the period from September 22, 1919, to October 25, 1919?

A. 67,740 shares.

Q. Were 65,000—

**MR. LEWIS, JR.:** Do not lead him.

Q. All right. How many shares were transferred by Mr. Alfred I. du Pont?

A. 65,449.

Q. And to whom were they transferred?

A. To the de Nemours Investment Corporation.

Q. Is there a transfer there from the Trustee for H. Belin du Pont?

A. What was the question?

Q. Is there a transfer there from the Trustee for H. Belin du Pont?

A. Yes.

Q. To whom?

A. To Henry B. du Pont.

Q. Is Henry B. du Pont the same person as H. Belin du Pont?

A. Yes.

Q. How many shares were transferred?

A. 1564.

Q. Now, in the period from October 28th to November 21st, I do not know why these were not kept on even months, but they seem to have chopped them off at the ends of weeks I guess—what were the total transfers?

A. 4745 shares.

Q. Is there a transfer there from Alfred I. du Pont?

A. Yes.

Q. To whom?

A. To the Nemours Investment Corporation.

Q. How many shares?

A. 4000 shares.

Q. From November 22d to December 26th, what is the total number of transfers?

A. 11588.

Q. Does that include transfers to F. D. Brown, W. S. Carpenter, Jr., Lamont du Pont, A. Felix du Pont, J. B. D. Edge, C. A. Mead, C. A. Patterson, F. W. Picard and William C. Spruance?

A. It does.

Q. In how many shares?

A. 1000 shares.

Q. Is there a transfer in that period, from Alfred I. du Pont?

A. Yes.

Q. To whom?

A. Nemours Investment Corporation.

Q. How many shares?

A. 2000 shares.

Q. From the period of December 20, 1919, to January 24, 1920, what were the total transfers?

A. 590 shares.

MR. IVINS: You may cross-examine.

MR. LEWIS, JR.: I have no cross-examination.

MR. IVINS: Plaintiff rests.

MR. LEWIS, JR.: May we take a recess?

THE COURT: Suppose we take a recess for five minutes.

(After a short recess.)

MR. MORRIS: May it please your Honor, the Government will offer no testimony.

#### AS TO BRIEFS AND ARGUMENTS.

THE COURT: Then, gentlemen, we are left to the selection of some time for argument. I have endeavored to find out some period that might be convenient, whereby this court room might be used, and I will be sitting in Philadelphia in two-week periods from now until June.

I would suggest that the plaintiff's brief, and, in a separate printed document, plaintiff requests for findings of fact and conclusions of law, be filed on Monday, April 12th, if you will, Mr. Ivins, and put your requests for findings of fact in a separate printed document which I think will be helpful to the Court.

MR. IVINS: I shall be glad to do that.

THE COURT: And Mr. Lewis and Mr. Morris, if you would have your brief, and in a separate printed document, your requests for findings of fact and conclusions of law, by Friday, April 30th, would that give you sufficient time?

MR. LEWIS, JR.: Yes, I think so.

THE COURT: And then the plaintiff's reply brief on May 10th.

I suggest the argument be held, if agreeable to counsel and convenient to counsel, on Thursday, May 13th, at 10 o'clock A. M., and I will be prepared at that time to give

the respective sides as much time for the oral argument as they may desire.

MR. IVINS: That will be very satisfactory to us.

THE COURT: Is that agreeable to you?

MR. LEWIS, JR.: Yes.

THE COURT: This court will then recess until 4:30 this afternoon.

MR. MORRIS: Will your Honor indulge us one moment?

THE COURT: Yes.

MR. MORRIS: Mr. Lewis suggests, if the Court please, that the only possible thing that might delay us, is the delay against the briefs and other papers printed through the Government Printing Office. If we are not able to get them printed then, will your Honor take a typewritten copy?

THE COURT: Certainly.

The court will recess until 4:30.

(Whereupon, at 3:05 P. M., the taking of testimony was concluded.)

**PLAINTIFF'S EXHIBIT NO. 1.**

(Copy.)

9012 du Pont Building,  
Wilmington, Delaware,  
June 23, 1919

**FINANCE COMMITTEE**  
from P. S. du Pont:

**SALARIES**

I recommend that a committee be appointed to study the question of proper compensation to the members of the new Executive Committee with the request that this committee investigate methods adopted by other corporations toward the securing and retaining of men in similar valuable positions. The salaries now being paid by the du Pont Company do not seem sufficient to insure best results for any length of time.

**CHAIRMAN OF THE BOARD**

(s) P. S. du Pont

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**PLAINTIFF'S EXHIBIT NO. 2.**

**EXTRACT FROM MINUTES OF FINANCE COMMITTEE MEETING**  
**#144**

**JUNE TWENTY FIFTH 1919**

**E. I. DU PONT DE NEMOURS & COMPANY**

**COMPENSATION TO EXECUTIVE COMMITTEE MEMBERS**

Upon recommendation of the Chairman, as per letter of June 23, 1919 (#998), the following resolution was offered and unanimously adopted:—

**RESOLVED**, that the Chairman appoint a Committee of one to study the proper method of compensating the members of the Executive Committee.

The Chairman thereupon appointed Vice President H. F. Brown to make the above-mentioned study.

**PLAINTIFF'S EXHIBIT NOS. 3 AND 4.**

[Omitted by consent. Minutes of executive committee extending time of sub-committee to report.]

**PLAINTIFF'S EXHIBIT NO. 5.**

**EXTRACT FROM MINUTES OF FINANCE COMMITTEE MEETING  
#150**

**AUGUST TWENTY SEVENTH, 1919**

**E. I. DU PONT DE NEMOURS & COMPANY**

**COMPENSATION TO MEMBERS OF THE  
EXECUTIVE COMMITTEE**

In compliance with action taken at meeting June 25, 1919, a further report was received from Vice President H. F. Brown dated August 19, 1919. (#1378) on the above mentioned subject. After discussion, the following resolution was offered and unanimously adopted:

**RESOLVED**, that a committee of three be appointed, with Mr. H. F. Brown as Chairman, to make recommendation of compensation for members of the Executive Committee:

**RESOLVED FURTHER**, that copies of Mr. H. F. Brown's reports of August 4, 1919 (#1266) and August 19, 1919 (#1378) be referred to the members of said Committee for their information.

The Chairman thereupon appointed the following committee:

**Mr. H. F. Brown, Chairman,  
Mr. Irene du Pont,  
Mr. J. J. Raskob**

I, M. D. Fisher, Secretary of the Finance Committee of E. I. du Pont de Nemours & Company, and custodian of the records of said Committee, do hereby certify that the above is a true and correct copy of extract taken from the original minutes of said Finance Committee.

M. D. FISHER

Secretary, Finance Committee

E. I. du Pont de Nemours &  
Company

(Seal)

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**PLAINTIFF'S EXHIBIT NOS. 6, 7, 8 AND 9.**

[Omitted by consent. Minutes of executive committee extending time of sub-committee to report.]

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**PLAINTIFF'S EXHIBIT NO. 10.**

November 11th, 1919.

TO: FINANCE COMMITTEE,

FROM: SUB-COMMITTEE.

Your committee appointed to study the matter of proper compensation for members of the Executive Committee beg to make the following recommendations:

1st:—that E. I. duPont de Nemours & Company enter into an annual contract with each member of its Executive Committee, agreeing to pay him a salary of \$30,000. per annum, and in addition thereto, an amount equal to 1% of the annual net earnings of the Company in excess of 10% on the net capital invested as shown by the books of the Company at the beginning of each year. In determining earnings and net capital invested, there shall be excluded earnings and capital invested in DuPont American Industries to the extent that such are shown on the books of E. I. duPont de Nemours & Company. For example, the net capital employed as shown on balance sheet of September 30th, 1919 is determined as follows:

Debenture stock outstanding .....	\$60,813.950.
Common stock outstanding .....	\$58,854,200.
Surplus .....	\$71,226,894.

Total .....	\$190,895,044.
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Less: amount of DuPont American Industries investment as shown on books...	\$ 49,045,300.
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Balance .....	\$141,849,744.
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equals net capital employed for the purposes contemplated herein.

The amount of such additional compensation shall be invested in common stock of the Company at current market prices and certificates for such common stock shall be delivered to the individuals as soon after the end of each year as it is possible to determine the earnings and have certificates issued. Should it be impossible to purchase common stock at prices which to the Finance Committee seem reasonable, the additional compensation may be paid either in cash or in debenture stock at the discretion of the Finance Committee.

These contracts may be terminated by either party on thirty days written notice, in which event settlements shall be made to the date of such termination.

There is attached hereto a table showing the results of this plan under various assumed earnings.

2nd: This form of contract, if adopted, makes it desirable, and we recommend, that the Bonus Plan be amended as follows:

(a) to exclude members of the Executive Committee from participation under the "B" Bonus Plan and

(b) in such other ways as this new relationship with members of the Executive Committee who are excluded from the "B" Bonus Plan may dictate as being desirable. It would seem desirable, for instance, to exclude from net earnings as now defined under the Bonus Plan, all divi-

dends or earnings received by the Company from its investments in DuPont American Industries.

3rd: The Company shall issue from its Treasury 1,000 shares of common stock at \$400. per share to be held in trust for each member of the Executive Committee under the following terms and conditions, to-wit:

(a) On January 1st, 1925, there shall be credited to each member of the Executive Committee on account of this trust, \$150,000, provided that he is still a member of the Executive Committee at that time or is occupying a position which has been approved by the Finance Committee and being a position of equal importance, and in this event, said beneficiary shall have the right to acquire said 1,000 shares of stock by the payment of \$250,000. in cash, subject to interest and dividend adjustments as hereinafter provided.

(b) During the period of this Trust, all dividends paid on said stock shall be credited to the account of said beneficiary and said account shall be charged with interest at the rate of  $4\frac{1}{2}\%$  per annum.

(c) In the event of the death of a beneficiary hereunder prior to January 1st, 1925, there shall be credited to his stock trust account \$150,000. with interest and dividend adjustments and his estate shall have the privilege of purchasing said 1,000 shares of stock for \$250,000. cash with interest and dividend adjustments provided this privilege is exercised within six months after the date of his death.

7/-

H. F. BROWN  
IRENEE DU PONT  
J. J. RASKOB

CAPITAL INVESTED	ASSUMED EARNINGS		PAID TO EXECUTIVE COMMITTEE		TOTAL ANNUAL AMOUNT TO EXECUTIVE COMMITTEE IN- CLUDING CREDIT ON STOCK PURCHASES	
	% Capital Invested	Amount	Amount	% of total Earnings	Amount	% of total Earnings
\$140,000	10%	\$14,000	0	0	\$270	% 1.90
\$140,000	11%	\$15,400	\$126	% .82	\$396	% 2.57
\$140,000	12%	\$16,800	\$252	% 1.50	\$522	% 3.10
\$140,000	13%	\$18,200	\$378	% 2.08	\$648	% 3.56
\$140,000	14%	\$19,600	\$504	% 2.57	\$774	% 3.95
\$140,000	15%	\$21,000	\$630	% 3.00	\$900	% 4.28
\$140,000	20%	\$28,000	\$1,260	% 4.50	\$1,530	% 5.46

NOTE—"000" omitted.

(NO EXHIBIT NO. 11.)

**PLAINTIFF'S EXHIBIT NO. 12.****EXTRACT FROM MINUTES OF FINANCE COMMITTEE MEETING  
#158****NOVEMBER TWELFTH, 1919.****E. I. DU PONT DE NEMOURS & COMPANY****QUESTION OF COMPENSATION TO EXECUTIVE  
COMMITTEE MEMBERS:**

In compliance with action taken at meeting August 27, 1919, report was received from the Sub-Committee consisting of Messrs. H. F. Brown, Irene du Pont and J. J. Raskob dated November 11, 1919 (#1876) in connection with the above-mentioned subject. After full discussion, it was moved and unanimously carried, (Vice President Lamont du Pont not voting) that this report be referred back to the Sub-committee with the suggestion that consideration be given to the question of making some provision for securing possession of the Common Stock in the event of the death of a beneficiary, and with the additional suggestion that the Sub-Committee confer with the Legal Department and have suitable contracts prepared for consideration by this Committee at our next regular meeting.

**PLAINTIFF'S EXHIBIT NO. 13.**

[Omitted by consent. Minute of executive committee extending time of sub-committee to report.]

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**PLAINTIFF'S EXHIBITS NOS. 14 AND 15.**

[Omitted by consent. These were a letter from H. Fletcher Brown, vice-president of du Pont Company, to Richard V. Lindebury, dated December 3, 1919, requesting opinion on proposed agreement between company and executives, and Lindebury's reply, dated December 8, 1919, advising against such action. These exhibits are summarized in paragraph 11 of District Court's findings of fact.]

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**PLAINTIFF'S EXHIBIT NO. 16.**

[Omitted by consent. Minute of executive committee extending time of sub-committee to report.]

**PLAINTIFF'S EXHIBIT NO. 16½.**

**STOCKHOLDERS OF E. I. DU PONT DE NEMOURS & COMPANY**  
**1,000 SHARES OR OVER—COMMON STOCK**  
**AS OF DECEMBER 31, 1919**

E. Ahuja	1,530	Pierre S. du Pont &	
Julia du Pont Andrews	1,091	Ethel H. du Pont,	
John Aspinwall	2,320	guardians of	
Ethel du Pont Barks-		Paulina du Pont	1,321
dale	3,764	do—of Samuel	
Hamilton M. Barksdale	3,718	Hallock du Pont	1,322
Margaretta E. Belin	3,002	do—of Wil-	
F. Donaldson Brown	1,307	hemina H. du	
H. F. Brown	2,587	Pont	1,321
Susy W. Buckner	1,004	William du Pont	28,000
Mary W. Carpenter	1,100	DuPont Securities	3,412
R. R. M. Carpenter	1,645	DuPont Securities	10,818
Walter S. Carpenter,		Mary L. Fenn Earn-	
Jr.	1,381	shaw	2,266
Christiana Securities	163,182	Jas B. D. Edge	1,305
Frank L. Connable	1,057	R. W. Ellis	1,000
Louisa d'A duPont		Joseph R. Ensign	2,906
Copeland	3,000	Equitable Trust Co.	
Julia W. E. Darling	2,598	Trustee u/d of	
A. Felix duPont	4,636	Trust dated	
Alexis I. du Pont	4,965	11/26/12	1,464
Alexis I. & Eugene		William H. Fenn, Jr.	2,456
du Pont Trus. for		Fidelity Trust Co.	
Amelia du Pont		Trustee u/w of	
u/w Eugene du		Alexis I. du Pont	
Pont	2,582	for Eliz. duP.	
do—for Julia S.		Bayard	3,184
duPont	2,582	do—for Eliz. B.	
do—for Anne du		du Pont	6,368
Pont	2,582	do—for Alice	
Alfred I. du Pont	4,100	duP. Ortiz	3,184
Amy E. du Pont	1,091	Sophie du Pont Ford	1,126

*Plaintiff's Exhibit No. 17*

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Archibald M. L. du Pont	2,524	Glenden Land Company	2,000
E. I. du Pont de Nemours & Co	2,365	Willis F. Harrington	1,031
Ernest du Pont	4,186	Elizabeth D. Haskell	1,356
Ethel du Pont	2,164	Harry G. Haskell	1,002
Eugene du Pont	5,155	C. B. Holladay	1,500
Eugene E. du Pont	5,085	Tilghman Johnston & Walter Blackson, Trustee Estate of Wm. G. Ramsay	1,807
E. Paul du Pont	1,683	C. A. Meade	1,168
Francis I. du Pont	2,080	Susan A. E. Morse	2,619
Francis I., A. Felix & Ernest du Pont Tr. for Irene S. du Pont, u/w Francis G. du Pont do—for Eleanor du Pont Perot	2,445	Nemours Investment Corp.	71,449
Henry B. du Pont	1,564	Nobel's Explosives Co. Ltd.	1,442
H. F. du Pont	22,802	Chas. A. Patterson	1,805
Irene du Pont	2,785	Anne Peyton	1,091
Irene du Pont, John J. Raskob & William Winder Laird Trus. under trust deed dated 7/29/19	14,000	F. W. Pickard	1,464
Lammot du Pont	6,000	H. M. Pierce	1,231
Marianna du Pont	2,100	J. G. Reynolds	1,300
Philip F. du Pont	5,908	John L. Riker	4,734
		May Saulsbury	1,028
		H. Rodney Sharp	1,013
		H. Rodney Sharp, Trustee u/a dated 11/30/18	10,000
		Isabella du Pont Sharp	1,842
		W. C. Spruance	1,035
		F. G. Tallman	1,035

In pencil.

588,542

486,320

**PLAINTIFF'S EXHIBIT NO. 17.**

[Omitted by consent. Minute of executive committee extending time of sub-committee to report.]

**PLAINTIFF'S EXHIBIT NO. 18.****E. I. DU PONT DE NEMOURS & COMPANY****FINANCE COMMITTEE**

Meeting #162 (Special Meeting), held at the office of the Company, Wilmington, Delaware, 3.00 p. m., December 16, 1919.

**PRESENT:** Ireneë duPont  
H. F. Brown  
R. R. M. Carpenter  
Wm. Coyne  
H. G. Haskell  
F. G. Tallman  
J. J. Raskob  
**ALSO:** J. P. Laffey  
V. S. Thomas  
**ABSENT:** P. S. duPont  
H. F. duPont  
Lamot duPont  
F. L. Connable

In the absence of the Chairman, Mr. Ireneë duPont was chosen Chairman pro tempore.

**QUESTION OF COMPENSATION TO EXECUTIVE COMMITTEE MEMBERS:**

In accordance with understanding reached at meeting held yesterday, December 15th, the Legal Department presented tentative forms of contracts with members of the Executive Committee, and after full discussion the following resolution was offered and unanimously adopted:

**RESOLVED**, that the Legal Department be requested to proceed immediately with the drafting of contracts covering compensation to Executive Committee members along the lines of the tentative forms presented at this meeting, and to advise this Committee their con-

clusions as to whether the making of such contracts should be submitted to the stockholders for approval.

The following resolution was then offered and unanimously adopted:

**RESOLVED**, that the President be authorized to say to the members of the Executive Committee that the Finance Committee have under consideration the working out of an arrangement with each member of the Executive Committee under which, in lieu of their participation in the "B" Bonus Plan of the Company, they will have a definite contract under which they will receive

(a) \$30,000. per year salary;

(b) \$150,000. at the end of five years if they are still in the employ of the Company as members of the Executive Committee or occupy some other position approved by the Finance Committee as equivalent thereto;

(c) One percent. (1%) of the annual net earnings of the Company received from the capital employed under their direction after deducting 10% on the amount of said capital as shown on the books of the Company; such additional compensation to be payable in common stock of the corporation at cost if same can be secured at prices which in the opinion of the Finance Committee seem reasonable, otherwise payable in cash.

The Company will also pay the premiums on a \$150,000. life insurance policy on the life of each member of the Executive Committee for five years.

**RESOLVED FURTHER**, that these contracts be submitted to the stockholders for approval, if our attorneys determine this to be necessary or advisable.

The following resolution was also offered and unanimously adopted:

**RESOLVED**, that report from the Sub-Committee dated November 11, 1919 (#1876), be received and ordered filed.

Upon motion, the meeting was adjourned.

This is to certify that the foregoing is a true and correct copy of minutes of meeting of **FINANCE COMMITTEE** of **E. I. DU PONT DE NEMOURS & COMPANY** held on December 16, 1919.

**M. D. FISHER**

Assistant Secretary

**E. I. duPont deNemours & Company**

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**PLAINTIFF'S EXHIBIT NO. 19.**

[Omitted by consent. Waiver extending the statute of limitations for assessment and collection of income taxes.]

**[NO EXHIBIT NO. 20.]**

**PLAINTIFF'S EXHIBIT NO. 21.**

**Quotations Taken from Bound Copy Book of Newspapers  
in Period October 1, 1919 to December 31, 1919—  
"Every Evening," Wilmington Evening Newspaper  
Prices Quoted on E. I. du Pont de Nemours & Company  
Common Stock.**

*October, 1919*

*December, 1919*

1	311 — 317
2	315 — 320
3	315 — 320
4	315 — 320
6	315 — 320
7	315 — 320
8	315 — 320
9	315 — 320
10	315 — 320
11	315 — 315
13	Holiday 0
14	315 — 325
15	315 — 325
16	315 — 325
17	315 — 325
18	315 — 325
20	320 — 330
21	320 — 330
22	320 — 330
23	340 — 350
24	340 — 350
25	340 — 350
27	340 — 350
28	350 — 365
29	350 — 375
30	380 — 405
31	400 — 425

1	375 — 390
2	375 — 385 Ex. Div.
3	365 — 380 Ex. Div.
4	365 — 380 Ex. Div.
5	365 — 380 Ex. Div.
6	365 — 380 Ex. Div.
8	No Paper
9	365 — 380 Ex.
10	365 — 380 Ex.
11	365 — 380
12	365 — 380
13	370 — 380
15	370 — 380
16	370 — 380
17	370 — 380
18	370 — 380
19	370 — 380
20	370 — 380
22	370 — 380
23	
24	370 — 380
25	Holiday
26	370 — 380
27	360 — 376
29	360 — 376
30	360 — 375
31	360 — 375

*November, 1919*

1	400 — 425
3	400 — 425
4	Election
5	400 — 435
6	410 — 420
7	410 — 420
8	410 — 420
10	410 — 425
11	410 — 425
12	400 — 420
13	400 — 420
14	400 — 420
15	380 — 400
17	380 — 400
18	380 — 400
19	380 — 400
20	380 — 400
21	380 — 410
22	380 — 410
24	No paper
25	380 — 410
26	380 — 410
27	
28	380 — 410
29	375 — 380

And, thereafter, on April 12, 1937, the plaintiff requested the Court to make the following findings of fact and conclusions of law, viz.:

**PLAINTIFF'S REQUESTS FOR FINDINGS OF FACT.**

Plaintiff's requests for findings of fact numbered 1, 2, 3, 4, 6, 7, 8, 12, 14, 15, 19, 20, 24, 32, 34 and 35 are omitted by consent as they are identical with the similarly numbered findings of the District Court hereinafter printed. Plaintiff's requests for findings of fact numbered 5, 10 and

13 are omitted by consent being substantially identical with the similarly numbered findings of the District Court hereinafter printed. Plaintiff's request for findings of fact numbered 11 is omitted by consent as it is identical with the District Court's finding numbered 11, except that the last sentence in the court's finding was not included in the request.

9. On June 23, 1919, the plaintiff sent a communication to the finance committee of the du Pont Company in which he recommended that a committee be appointed to study the question of proper compensation for the members of the new executive committee. He stated that it did not seem that the salaries then being paid were sufficient to insure the best results for any length of time. [Ex. 1.]

16. On December 31, 1919, there were 6 stockholders of record who owned 9000 shares or more of du Pont Company common stock [Ex. 16½]. Of these six, two were trustees holding a total of 24,000 shares, under trusts created by the plaintiff. [Exs. O, P, Q. to Stip.]

17. Because of the doubtful legality of the issuance of stock by the du Pont Company to members of the executive committee, and because of the inability of the company to purchase 9,000 shares of its stock, except perhaps at exorbitant prices, plaintiff offered to sell 1000 shares of such stock to each of the members of such committee. [Exs. D and F to Stip.] He did not have available 9,000 shares of such stock for delivery. He had available only 74 shares. [Ex. 16½, Tr. 97.] He had a reversionary interest in two trusts which he had created which held 24,000 shares of such stock, which he expected to be returned to him within the next few years. [Exs. O, P, Q. to Stip.] He was then the owner of 29,125 shares of the common stock of Christiana Securities Company out of a total authorized, issued

and outstanding capital stock of 75,000 shares. The Christiana Securities Company was then the owner of 183,000 shares of the common stock of the du Pont Company out of a total 588,542 shares then issued and outstanding. [Stip. ¶¶ XIII and XII.] This direct and indirect ownership made the plaintiff the beneficial owner of more than a 16 per cent. interest in the du Pont company, an interest greater than that of any other single individual. [Ex. 16½.]

18. Pursuant to a resolution of its board of directors held on December 12, 1919 [Exs. C to E to Stip.], Christiana Securities Company and the plaintiff entered into a written agreement with the plaintiff on December 23, 1919, under which the Christiana Securities Company loaned 9000 shares of du Pont common stock to the plaintiff, said 9000 shares to be returned in kind within ten years. The plaintiff delivered as security for the return of said shares, 3800 shares of the stock of Christiana Securities Company, and agreed to pay to said company amounts equal to all dividends paid on said 9000 shares as and when such dividends were declared and paid. [Ex. D to Stip.]

21. The 9000 shares of du Pont Company common stock borrowed from Christiana Securities Company were delivered by the plaintiff, 1000 shares to each of the nine members of the executive committee, and the plaintiff received \$320,000 in cash from each of such members, a total of \$2,880,000. [Stip., XI, Tr. 98.]

22. The price of \$320 per share was arrived at as the result of a computation prepared by the treasurer of the du Pont Company which was intended to show the net asset value of the stock. [Ex. L to Stip.] It was considered a fair price by all parties concerned.

23. On March 10, 1921, Irene due Pont, president of the du Pont Company, addressed a communication to the

plaintiff in which he pointed out that the du Pont common stock was selling for around \$140 per share, that the sale by the plaintiff to the members of the executive committee of 1000 shares each at \$320 per share had proven (on paper at least) very disadvantageous to the committeemen, that some of them were materially disturbed over their financial situation; that they felt that it would be unethical for them to ask for any modification of the contract, but that in his opinion, they would assent to a modification if they were sure that the suggestion came from the plaintiff, and that it would eliminate any embarrassment which the plaintiff might have in the matter. He also stated that it was unfortunate that a number of the company's important men should have a financial worry to distract them, however little, from applying their utmost energy to the company's affairs. He suggested certain plans to meet this situation. [Ex. Q to Stip.]

25. The offer so made by the plaintiff was accepted by each member of the executive committee. [Stip., ¶ XIV.]

26. On June 15, 1920, the du Pont Company paid a stock dividend of  $2\frac{1}{2}$  per cent. On September 15, 1920, the du Pont Company paid a stock dividend of  $2\frac{1}{2}$  per cent. On each of these dates plaintiff delivered to Christiana Securities Company 225 shares of du Pont common stock, representing the stock dividends on 9000 shares. [Ex. G to Stip.] On December 15, 1920, the du Pont Company paid a stock dividend of  $2\frac{1}{2}\%$  per cent. On December 27, 1920, plaintiff borrowed 450 shares of du Pont common stock from the Christiana Securities Company. [Ex. G to Stip.] On December 15, 1922, the du Pont Company paid a stock dividend of 50 per cent. On January 4, 1923, plaintiff entered into a new contract with Christiana Securities Company under which it was agreed that he was obligated to the Christiana Securities Company for 14,512 shares of du Pont common stock, and delivered to

the Christiana Securities Compnay additional collateral accordingly. In other respects the terms of the agreement of Decèmber 23, 1919, were continued. [Ex. F to Stip.]

27. On August 10, 1925, the du Pont Company paid a stock dividend of 40 per cent. On August 10, 1925, plaintiff entered into a new contract with Christiana Securities Company under which it was agreed that he was obligated to the Christiana Securities Company for 20,316 shares of du Pont common stock, and delivered to the Christiana Securities Company additional collateral accordingly. In other respects the terms of the agreement of December 23, 1919, were continued. [Ex. G to Stip.]

28. On October 28, 1926 the du Pont Company issued two shares of no-par common stock in exchange for each outstanding \$100 par share. On October 28, 1926, plaintiff entered into a new contract with Christiana Securities Company under which it was agreed that he was obligated to the Christiana Securities Company for 40,632 shares of no-par du Pont common stock. In other respects the terms of the agreement of December 23, 1919, were continued. [Ex. H to Stip.]

29. On January 21, 1929, the du Pont Company issued three and one-half shares of \$20 par value common stock in exchange for each outstanding no-par share. On January 21, 1929, plaintiff entered into a new contract with Christiana Securities Company under which it was agreed that he was obligated to the Christiana Securities Company for 142,212 shares of du Pont common stock. In other respects the terms of the agreement of December 23, 1919, were continued.

30. The agreement of December 23, 1919, between the plaintiff and Christiana Securities Company, which by its terms was to expire on December 23, 1929, was not renewed or extended.

31. On October 25, 1929, plaintiff entered into a written agreement with Delaware Realty & Investment Company, a

corporation in which he was not a stockholder, under which said company agreed to and did loan to the plaintiff 142,212 shares of du Pont Company common stock to satisfy his then obligation to Christiana Securities Company, said number of shares plus any increases by stock dividends or otherwise to be returned by the plaintiff within ten years. The 142,212 shares of du Pont Company stock were received by the plaintiff and were delivered by him to Christiana Securities Company in discharge of his obligation under the contract described in findings 16 and 24-27 above. [Stip., ¶ XV.] This agreement required the deposit of certain collateral. It further required the plaintiff to pay to said company an amount equivalent to all cash and property dividends declared and paid on said 142,212 shares, so borrowed, plus any increase thereof by stock dividend or otherwise, or any balance of said shares which might be owing under the agreement, as and when said dividends were declared and paid by the du Pont Company. It also provided that should any lawful tax liability, Federal or State, accrue against and be paid by Delaware Realty & Investment Company, which liability, but for the execution of said agreement, otherwise would not accrue, plaintiff, upon being notified thereof, would reimburse said company for all such taxes, together with all interest and penalties that might be levied or imposed in respect thereof. [Ex. S. to Stip.]

The first sentence of plaintiff's request numbered 33 is omitted by consent as being identical with the District Court's finding similarly numbered and hereinafter printed. The balance of plaintiff's request numbered 33 reads:

In 1933 the Commissioner of Internal Revenue determined that said \$80,063.56 paid by plaintiff to the Delaware Realty and Investment Company in 1931 was income to said company in that year, and that an additional tax was due thereon. The plaintiff was called upon to and did in 1933 reimburse said company on account of said additional tax in

the amount of \$9,607.98 together with interest thereon in the amount of \$663.98, a total of \$10,271.60. [Stip., ¶ XVII.]

36. The plaintiff had in 1919, 1929 and 1931, large and diversified investments in stocks and securities. His direct and indirect beneficial ownership in the du Pont Company in 1919, rendered him the largest individual beneficial owner in the du Pont Company. He had large investments in other stocks and securities. His gross income, as shown by his Federal income tax return for the year 1931, was: [Ex. A to Stip.]

Salaries, wages and commissions	\$ 20,640.78
Interest on bank deposits, notes, corporation bonds, etc.	336,748.05
Rents and Royalties	4,876.00
Dividends on stock of domestic corporations	1,475,046.54
	<hr/>
	\$1,837,311.37

Since resigning as president of the du Pont Company, as of May 1, 1919, he has devoted the greater part of his time to the management of his investments. In 1919 the plaintiff maintained an office in Wilmington, Delaware, for the conduct of his business affairs. [Tr. 84.] He had seven or eight employees in his office at that time. In 1920 he also maintained an office in New York for the conduct of his business. He has maintained both such offices ever since such years. The expense of maintaining such offices was \$36,310.67 in 1931. [Ex. A to Stip.] In 1931 plaintiff sold 63,345 shares of stock in various corporations in which he was a stockholder. [Ex. A to Stip.] He had substantial changes in his investments in 1919 and 1929.

37. The contract made by plaintiff with the Christiana Securities Company on December 23, 1919 was a transaction entered into for profit and in connection with his business of investor regularly carried on.

38. The contract made by plaintiff with the Christiana Securities Company on January 4, 1923 was a transaction entered into for profit and in connection with his business of investor regularly carried on.

39. The contract made by plaintiff with the Christiana Securities Company on August 12, 1925, was a transaction entered into for profit and in connection with his business of investor regularly carried on.

40. The contract made by plaintiff with the Christiana Securities Company on October 28, 1926 was a transaction entered into for profit and in connection with his business of investor regularly carried on.

41. The contract made by plaintiff with the Christiana Securities Company on January 21, 1929, was a transaction entered into for profit and in connection with his business of investor regularly carried on.

42. The contract made by plaintiff with the Delaware Realty & Investment Company on October 25, 1929 was a transaction entered into for profit and in connection with his business of investor regularly carried on.

43. The payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company as hereinbefore shown were ordinary and necessary expenses of his business of investor.

44. The payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company as hereinbefore shown were payments required to be made as a condition to the continued use, for purposes of his business, of property in which plaintiff had no equity.

45. The payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company as hereinbefore shown were for interest upon his indebtedness to that company.

46. The payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company as hereinbefore shown were losses sustained during the taxable year in his business.

47. The payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company as hereinbefore shown were losses incurred during the taxable year in a transaction entered into for profit.

### **PLAINTIFF'S REQUEST FOR CONCLUSIONS OF LAW**

1. Plaintiff was entitled under section 23 of the Revenue Act of 1928 to deduct from his gross income, in computing net income for 1931, the sums of \$567,648 and \$80,063.56 paid by him to the Delaware Realty & Investment Company during that year.

2. Plaintiff is entitled to judgment against defendant in the sum of \$172,351.64, with interest from September 24, 1935, according to law.

Respectfully submitted,

RICHARDS, LAYTON & FINGER,  
AARON FINGER,

*Attorneys for Plaintiff.*

IVINS, PHILLIPS, GRAVES & BARKER,  
JAMES S. Y. IVINS,  
LAURENCE GRAVES,  
*Of Counsel.*

And thereafter, on May 5, 1937, the defendant requested the Court to make the following findings of fact and conclusions of law, viz.:

**DEFENDANT'S REQUEST FOR FINDINGS OF FACT.**

Defendant's requests for findings numbered 1 to 10 inclusive, 12, 14, 15, 19, 20, 21, 23, 24, 26, 27, 28, 29, 32, 33, 34 and 35, omitted by consent as they are identical with the similarly numbered findings of the District Court hereinafter printed.

Defendant's request for finding of fact numbered 11 is omitted by consent as it is identical with the District Court finding numbered 11 except that the last sentence in the Court's finding was not included in the request.

Defendant's request for finding of fact numbered 13 omitted by consent as being substantially identical with the similarly-numbered finding of the District Court hereinafter printed.

16. On December 31, 1919, there were six stockholders of record who owned 9000 shares or more of the du Pont Company common stock. Of these six, two were trustees holding a total of 24,000 shares, under trusts created by the plaintiff, and being the trusts mentioned in the next succeeding paragraph of these findings. On December 31, 1919, Alfred I. du Pont owned or controlled 75,549 shares, or about 13 per cent., of the outstanding common stock of the du Pont Company. William du Pont owned 28,000 shares, or about 4½ per cent., of the outstanding common stock of the du Pont Company.

NOTE.—This finding is identical with plaintiff's sixteenth request so far as that request goes. There is added to it an identification of the trusts referred to and also a statement of the holdings of Alfred I. du Pont and William du Pont. As to these holdings, see Exhibit 16½, together with explanation of the holdings of the Nemours Investment Corporation at page 102.

17. In order to insure good management of the affairs of the du Pont Company by enlisting permanently the service of able men, to encourage the executive committeemen in future effort to benefit themselves and other stockholders, and in recognition of the good work done by the executive committeemen for the company, the plaintiff, at the instance of the du Pont Company and without any intention of making a profit from the transaction, offered to sell 1000 shares of the common stock of the du Pont Company to each member of the executive committee of the du Pont Company. He did not have available 9000 shares of such stock for delivery. He had available only 74 shares. He had a reversionary interest in two trusts which he had created which held 24,000 shares of such stock, which he expected to be returned to him within the next few years. He was then the owner of 29,125 shares of the common stock of Christiana Securities Company out of a total authorized, issued, and outstanding capital stock of 75,000 shares. The Christiana Securities Company was then the owner of 183,000 shares of the common stock of the du Pont Company out of a total 588,542 shares then issued and outstanding. This direct and indirect ownership made the plaintiff the beneficial owner of more than a 16 per cent. interest in the du Pont Company, an interest greater than that of any other single individual.

NOTE.—This finding omits the first five lines of the plaintiff's seventeenth request and substitutes therefor a statement which is a restatement of the plaintiff's reasons for entering into this transaction as stated by him in his letter of April 1, 1921, to the committeemen—Exhibit R attached to the stipulation. See also Tr. 96, 103. The plaintiff's statement of the reason why the plaintiff entered into this transaction refers to Exhibits D and F attached to the stipulation. These exhibits, so far as the defendant's counsel can discover, do not support in any way the statement made. It is probable that the references are intended to be to Exhibits C and E, for in these exhibits the statements copied into the finding are made, but it is to be noted that these are statements made not by the plaintiff, but in one instance by the secretary of the Christiana Securities Company, Mr. Raskob, and in the other instance are a quotation.

18. Pursuant to a resolution of its Board of Directors, copies of which resolution together with the report therein referred to are marked Exhibits C and E and are attached to this finding as a part hereof, Christiana Securities Company and the plaintiff entered into a written agreement on December 23, 1919, a copy of which agreement marked Exhibit D is attached to this finding and made a part hereof. The plaintiff delivered the 3800 shares of stock of the Christiana Securities Company as required by the aforesaid agreement.

**NOTE.**—This finding is similar to the plaintiff's eighteenth request. It differs in that instead of setting out a construction of the instruments referred to, the instruments themselves are set out. The plaintiff's construction as set out in this finding is incomplete and omits material parts of the report, resolution, and agreement referred to.

22. The price of \$320 per share was arrived at as the result of a computation prepared by the treasurer of the du Pont Company which was intended to show the net asset value of the stock. The plaintiff at the time considered \$320 per share to be a fair price.

**NOTE.**—This finding is the same as plaintiff's request No. 22 except that the last sentence has been changed so as to conform to the record. Tr. 96.

Defendant's request for finding of fact numbered 25 substantially identical with similarly numbered finding of the District Court hereinafter printed.

30. The agreement of December 23, 1919, between the plaintiff and Christiana Securities Company was not renewed. It ended and the new agreement was formed through the Delaware Realty & Investment Company. This new agreement was a continuation of the original contract.

**NOTE.**—This finding is similar to plaintiff's request No. 30, which has been changed so as to conform to the evidence. See Tr. 102 and Exhibit S.

*Defendant's Request for Findings*

31. On October 25, 1929, plaintiff entered into a written agreement with the Delaware Realty & Investment Company, a corporation in which he was not a stockholder, a copy of which is Exhibit S which is made a part of these findings. The 142,212 shares of the du Pont Company stock were received by the plaintiff and were delivered by him to the Christiana Securities Company in discharge of his obligation under the contract described in findings 16 and 24 to 27, above.

NOTE.—This request is similar to plaintiff's request No. 31. It substitutes for the plaintiff's construction of the agreement in question the agreement itself. Plaintiff's construction omits material parts of the agreement.

36. The plaintiff in 1919 and 1929 had large and diversified investments in stocks and securities. His gross income as shown by his Federal income tax return for the year 1931 was:

Salaries, wages and commissions.....	\$20,640.78
Interest on bank deposits, notes, corporation bonds, etc. ....	336,748.05
Rents and royalties.....	4,876.00
Dividends on stock of domestic corporations .....	1,475,046.54
	<hr/>
	1,837,311.37

The plaintiff in December 1919, was, and since that time has continued to be, the chairman of the board of the du Pont Company (Tr. 93) and a member of its finance committee (Tr. 110). At that time the plaintiff was a stockholder and a director of the General Motors Corporation, the Chatham & Phoenix Bank, the Philadelphia National Bank, the Bankers Trust Company (Tr. 88) and other corporations (Tr. 109). Almost every day some question concerning his personal business came before him and he devoted more or less 50 per cent. of his time to his investments (Tr. 85-A), which consisted in a large part of du Pont Company

stock, although he had other investments in securities of different corporations (Tr. 88). He changed his investments from time to time (Tr. 88) but he was not a speculator or trader (Tr. 88) and had practically no investments in brokerage accounts (Tr. 88, 91). By the year 1929 he had parted with a large part of his du Pont Company stock but was still a large owner of Christiana stock. However, his largest holdings were in General Motors Corporation (Tr. 92). He is unable to state what portion of his time he devoted to the concerns of the General Motors Corporation or to the concerns of the du Pont Company, but his connection with the General Motors Corporation was for the purpose of promoting the interest of the du Pont Company, which was a large stockholder in General Motors (Tr. 112, 113). In 1919 the plaintiff maintained an office in Wilmington, Delaware, for the conduct of his business affairs. He had seven or eight employees in his office at that time. In 1920 he also maintained an office in New York for the conduct of his business. He has maintained both such offices ever since such years. The expense of maintaining such offices was \$36,310.67 in 1931. In 1931 plaintiff sold 63,346 shares of stock in various corporations in which he was a stockholder.

NOTE.—This request compares with plaintiff's request No. 36. The chief difference between this request and the plaintiff's is that this request omits the statement that Mr. du Pont's direct and indirect beneficial ownership in the du Pont Company in 1919 rendered him the largest individual beneficial owner in the du Pont Company. This statement is omitted because when the testimony to this effect was offered by the plaintiff it was objected to by defendant's counsel and rejected (Tr. 97 et seq.). The second difference between the requests is that in lieu of the two and one-half line description of Mr. du Pont's business activities found in the plaintiff's request, a more elaborate statement is found in the defendant's request.

37. The plaintiff in this case was called as a witness but did not state the reasons which induced him to make

the contracts with the Christiana Securities Company and with the Delaware Realty & Investment Company.

38. The plaintiff entered into the contracts with the Christiana Securities Company primarily for the purpose of promoting the business interests of the du Pont Company and if there was any purpose on the part of the plaintiff to protect or enhance the value of his investments in the stock of the du Pont Company, such purpose was only incidental and was not the motive which induced the making of the said contracts.

39. The payments made by the plaintiff to the Delaware Realty & Investment Company in the year 1931 were not ordinary or necessary expenses which the plaintiff incurred in carrying on his business of conserving, protecting, or managing his investments.

40. The payments made by the plaintiff to the Delaware Realty & Investment Company in the year 1931 were not directly connected with and did not approximately result from any trade or business carried on by the plaintiff.

41. The contract with the Christiana Securities Company was not made with the intention or for the purpose of realizing any profit from such contract on the part of the plaintiff.

42. The sales to the executive committeemen were not made by the plaintiff for the purpose of or with the intention or hope of realizing any gain or profit from such sales.

43. The contract with the Delaware Realty & Investment Company was a continuation or extension of the transaction originally entered into with the Christiana Securities Company and the executive committeemen, and was entered into for the sole purpose of holding open and continuing the original transaction.

**DEFENDANT'S REQUEST FOR CONCLUSIONS OF  
LAW.**

Defendant's request for conclusion of law numbered 1 omitted by consent as it is substantially identical with the District Court's conclusion numbered 1 hereinafter printed.

Defendant's request for conclusion of law numbered 2 is omitted by consent as it is identical with the District Court's conclusion similarly numbered and hereinafter printed.

Respectfully submitted,

J. J. MORRIS, JR.,  
*United States Attorney,*  
MASON B. LEMING,  
E. J. DOWD,  
T. H. LEWIS, JR.,  
*Special Attorneys, Bureau of  
Internal Revenue.*

JAMES W. MORRIS,  
*Assistant Attorney General,  
Department of Justice.*

ANDREW D. SHARPE,  
LESTER L. GIBSON,

*Special Assistants to the Attorney General,  
Department of Justice.*

And thereafter, on the 21st day of February, 1938, the Court filed the following findings of fact and conclusions of law and opinion in said case, viz.:

# **FINDINGS OF FACT, CONCLUSIONS OF LAW AND OPINION.**

(Filed February 21, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF DELAWARE.

PIERRE S. DU PONT,

*Plaintiff,*

v.

WILLARD F. DEPUTY, Collector of  
Internal Revenue for the Dis-  
trict of Delaware,

*Defendant.*

No. 2.

September Term, A. D.  
1936.

Summons Case.

## **FINDINGS OF FACT.\***

1. The plaintiff is, and at the time this action was instituted was, a resident of Wilmington, Delaware.

2. On March 15, 1932, the plaintiff filed his Federal income tax return for the calendar year 1931 with the defendant, the United States Collector of Internal Revenue for the District of Delaware.

3. In or about the month of September, 1935, the Commissioner of Internal Revenue of the United States determined a deficiency in income tax against the plaintiff for the calendar year 1931 in the amount of \$142,466.79, whereupon the plaintiff filed a waiver of his right to appeal to the United States Board of Tax Appeals and consented to the

\*The exhibits incorporated in these findings by reference are reproduced ante; those indicated by letters are exhibits to stipulation No. 2 and those indicated by numbers are exhibits introduced at the trial.

immediate assessment of the deficiency, expressly reserving, however, the right to prosecute a claim for the refund thereof; the Commissioner then assessed said deficiency together with interest thereon in the amount of \$29,884.85, all of which the plaintiff paid to the defendant on September 24, 1935, in a total sum of \$172,351.64.

4. On March 2, 1936, plaintiff filed with the defendant a claim for the refund of the \$172,351.64 paid to the defendant on September 24, 1935.

5. The plaintiff became connected with the E. I. du Pont de Nemours & Company (hereinafter referred to as the du Pont Company) in 1890. He was treasurer of that company from 1902 until about the time he became president in 1915. He retired as president in 1919 and thereupon became chairman of the board of directors, which office he still holds.

6. Until 1914 the business of the du Pont Company was essentially that of manufacturing explosives, both military and commercial, but largely commercial. After the beginning of the World War in 1914, the military explosive business constituted nearly the entire business. However, during the war period the company was endeavoring to develop other lines of business, such as pyroline, dyes, paint and artificial leather. The business in these products from 1914 to 1919 was small in comparison to the military explosive business, but the company was obtaining experience in forming an organization to carry on these new activities. The military explosive business ceased at the end of the war. The company then hastened to develop and expand its business in the new products which it had developed.

7. The executive committee of the du Pont Company, consisting of nine members, functioned largely as the general manager of the company. After the termination of the war, it was decided that a new group of men should be placed on this committee, and nine new members were ap-

pointed in the spring of 1919. Each of these new members held an important executive position with the company.

8. The du Pont Company had a bonus plan for its employees which had been in operation for a number of years prior to 1919. This plan proved adequate during the war period when the earnings of the company were large. Upon the termination of the war, when faced with unknown earnings and possible heavy losses due to scrapping of plants, it was felt that the bonus plan then employed might be inadequate to get the best out of the men upon whom rested the responsibility of building up a new industry.

9. On June 23, 1919, the plaintiff, as chairman of the Board of the du Pont Company, submitted to the finance committee of the du Pont Company a recommendation which reads:

"I recommend that a committee be appointed to study the question of proper compensation to the members of the new executive committee, with the request that this committee investigate methods adopted by other corporations toward the securing and retaining of men in similar valuable positions. The salaries now being paid by the du Pont Company do not seem sufficient to insure best results for any length of time."

10. The policy of the du Pont Company, in which the plaintiff as one of the responsible officers of that company believed, was to pay the men in its organization, who were responsible for the conduct of the company's business, good salaries and, if possible, to have them interested as stockholders in the company.

11. A committee of one was appointed by the finance committee on June 25, 1919, to make this study. Reports were made by this committee from time to time and on August 27, 1919, a committee of three was appointed to make recommendations regarding the compensation to be paid. This committee made various reports of its activities and on November 11, 1919, submitted a report outlining a defi-

nite plan. This plan contemplated three things: (1) annual contracts for the payment of an annual salary of \$30,000, (2) additional compensation equal to 1 per cent. of the annual earnings of the company in excess of 10 per cent. of the net capital invested as shown by the books of the company, such additional compensation to be invested in the stock of the company at current market prices and delivered to the individuals after the close of the year, and (3) the issuance to each of the nine members of the committee of 1000 shares of common stock of the company at \$400 per share, to be held in trust until January 1, 1925, at which time there would be credited to each member on account of this trust the sum of \$150,000, if he was still a member of such committee, or if he occupied a position considered to be of equal importance, and each such member would then acquire the right to purchase such stock for \$250,000 in cash. This plan was considered by the finance committee, and certain changes suggested. Drafts of contract were prepared and submitted to counsel for the company, who on December 8, 1919, objected to the plan in so far as it involved the issuance of stock by the company. He pointed out that under the Delaware law, under which the du Pont Company was organized, a corporation could issue stock only for money paid, labor performed, or real or personal property acquired, and further that if the stock were to be issued for cash, it must first be offered for subscription to existing stockholders pro rata. This plan to be carried out in the terms indicated, thereupon was abandoned.

12. The du Pont Company did not have available for sale to the members of the executive committee 9000 shares of its stock, other than unissued stock. Such stock was not then listed on any exchange. It was not listed on the New York Stock Exchange until May, 1921. It was bought and sold in small lots by a Wilmington broker. The total number of shares purchased and sold by this broker for the following months were:

Month	Shares Purchased	Shares Sold
December, 1919	209	261
January, 1920	61	59
February, 1920	29	16

13. The total number of shares of du Pont Company stock transferred upon the books of the company, other than transfers by an individual to a personal holding company, or by a trustee to the beneficiary thereof, and after eliminating the 9000 shares transferred (as hereinafter shown) to the members of the executive committee, for the following periods were as follows:

Sept. 22, 1919—Oct. 25, 1919	727 shares
Oct. 28, 1919—Nov. 21, 1919	745 shares
Nov. 22, 1919—Dec. 26, 1919	588 shares
Dec. 26, 1919—Jan. 24, 1920	590 shares

14. Sales and purchases of the common stock of the du Pont Company through the Wilmington broker mentioned above, with the quantities and prices, are shown in Exhibit M attached to the stipulation of the parties herein, which exhibit is hereby made a part of these findings.

15. The bid and asked prices for du Pont common stock as quoted in the "Every Evening," a Wilmington daily newspaper, between October 1, 1919, and December 31, 1919, are as shown in Plaintiff's Exhibit 21, which is hereby made a part of these findings.

16. On December 31, 1919, there were six stockholders of record who owned 9000 shares or more of the du Pont Company common stock. Of these six, two were trustees holding a total of 24,000 shares, under trusts created by the plaintiff, and being the trusts mentioned in the next succeeding paragraph of these findings.

17. In order to insure good management of the affairs of the du Pont Company by enlisting permanently the

services of able men, to encourage the executive committee-men in future effort to benefit themselves and other stockholders, and in recognition of the good work done by the executive committee for the company, the plaintiff, at the instance of the du Pont Company offered to sell 1000 shares of the common stock of the du Pont Company to each member of the executive committee of the du Pont Company. The plaintiff did not have the purpose or intention of making a profit by the specific transaction of the sale of the 1000 shares of the common stock of the du Pont Company to each of the committeemen, but he did have the purpose and intention to conserve and enhance the value of his own substantial beneficial stock holdings in the du Pont Company by endeavoring to secure for the du Pont Company a stable and efficient management. He deemed this result would be best accomplished by causing the members of the executive committee to become stockholders in the du Pont Company. He did not have 9000 shares of du Pont Company stock available for delivery. He had available only seventy-four shares. He had a reversionary interest in two trusts which he had created which held 24,000 shares of such stock, which he had expected to be returned to him within the next few years. He was the owner of 29,125 shares of the common stock of Christiana Securities Company out of a total authorized, issued and outstanding capital stock of 75,000 shares. The Christiana Securities Company was then the owner of 183,000 shares of the common stock of the du Pont Company out of a total 588,542 shares then issued and outstanding. This direct and indirect ownership made the plaintiff the beneficial owner of more than a 16 per cent. interest in the du Pont Company, an interest greater than that of any other single individual.

18. Pursuant to a resolution of its board of directors, copies of which resolution together with the report therein referred to are marked Exhibits C and E and are attached to this finding as a part hereof, Christiana Securities Company and the plaintiff entered into a written agreement on

December 23, 1919, a copy of which agreement marked Exhibit D is attached to this finding and made a part hereof. The plaintiff delivered the 3800 shares of stock of the Christiana Securities Company as required by the agreement.

The agreement referred to was not entered into by the plaintiff with the Christiana Company with the intention or purpose of making a profit thereby.

The market for du Pont Company stock at this time was thin. Nine thousand shares of common stock of the du Pont Company could not have been purchased in the open market without substantially raising the price per share.

19. On December 22, 1919, Irene du Pont, president of the du Pont Company, addressed a communication to the finance committee in which he stated that the plaintiff had offered to sell 1000 shares of du Pont common stock to each of the members of the executive committee, that each of the members desired to accept the offer, that it was greatly desirable to have such men interested as partners in the business, and that it would be difficult for most of them to finance the purchase. He recommended that the finance committee authorize the treasurer to loan each member of the executive committee, for a period of five years, the sum of \$320,000, the purchase price of the stock, and that the company accept as collateral for each such loan 1000 shares of du Pont common stock and the assignment of a life insurance policy for \$150,000, the premium on which would be paid by the company.

20. On December 24, 1919, the finance committee of the du Pont Company held a special meeting and authorized the execution by the company of two contracts with each member of the executive committee. One contract was to provide for (1) the payment of an annual salary of \$30,000, (2) additional compensation of \$150,000 if still in the employ of the company and a member of the executive committee on December 31, 1924, (3) further additional com-

pensation equal to 1 per cent. of annual net earnings of the company over and above 10 per cent. on certain capital employed by the company, and (4) the payment by the company of the premiums on a life insurance policy for \$150,000 for a period of five years. The second contract dealt with the loan of \$320,000 being made to each member of the committee and the obligations of the parties. These contracts were executed.

21. Pursuant to the agreement between the plaintiff and the Christiana Securities Company dated December 23, 1919, a copy of which is annexed to these findings, marked Exhibit D, the plaintiff received from the Christiana Securities Company 9000 shares of common stock of E. I. du Pont de Nemours & Company. Thereafter, in the month of December, 1919, the plaintiff, pursuant to the plan contemplated by the contracts between the du Pont Company and each of the executive committeemen, sold and delivered 1000 shares of the common stock of the E. I. du Pont de Nemours & Company so received by him from the Christiana Securities Company to each of the executive committeemen. All of these sales he made at a price of \$320 per share. The plaintiff received at the time of the sale \$320,000 in cash from each of such committeemen, a total of \$2,880,000.

22. The net asset value of the stock of the du Pont Company was computed by its treasurer at the sum of \$320.94 per share. The price of \$320 per share, referred to in paragraph 21, supra, was considered to be a fair price by all the parties concerned.

23. On March 10, 1921, Irene du Pont, president of the du Pont Company, addressed a communication to the plaintiff, of which a copy is Exhibit Q, which is made a part of these findings.

24. On April 1, 1921, the plaintiff addressed a letter to each of the members of the executive committee reading as follows:

*Findings of Fact*

"In December 1919 you and others of the Executive Committee purchased from me one thousand (1,000) shares each of the common stock of E. I. duPont de Nemours & Company at \$320 per share. This stock was financed by a loan of \$320,000 made to you by the Company and the stock pledged as collateral. The object of the transaction was:

(1) To recognize the good work done by you for the Company;

(2) To encourage you in further effort to benefit yourself and other stockholders by placing you in a position to share in the profits of the Company;

(3) To continue the plan of insuring good management of the Company's affairs by enlisting permanently the services of able men through securing for them a personal interest in the Company's success apart from salary compensation.

The price charged for the stock was figured at asset value at that time and did not seem unreasonably high in view of the past earnings and future prospects. However, a change has come about in business affairs, so that many good investment opportunities are obtained below asset value. The company needs able men more than it ever did, not only for proper management of affairs but for assistance in restoring values that have declined during the year past. For the stockholders it is all important that you be free of worry over the unexpected outcome of your stock purchase and that your future efforts should result in substantial reward even though values of a year ago are restored and no more.

While no plan of readjustment by E. I. du Pont de Nemours & Company, representing the body of stockholders, has seemed possible, I, as a large stockholder, and, perhaps, the one to be most benefited by the recovery in value of the Company's shares, suggest the following modification of the original transaction:

I will turn over to you 400 shares of the Christiana Securities Company estimated to have a net value of \$400 per share (\$160,000 total), figuring holdings of E. I. du Pont de Nemours & Company stock by Christiana Securities Company at \$156 per share. This

stock is to be held by the Company as additional collateral on the loan made to you, subject to my right to redeem these 400 shares by payment of \$160,000 at the time of maturity of the loan made you by the Company. If I exercise this right, the \$160,000 will be applied to payment of the loan, the balance to be turned over to you. If I fail to exercise the above right, the 400 shares of stock of the Christiana Securities Company will become your property on payment of the loan. In the meantime, dividends declared on the stock of Christiana Securities Company, up to \$8,000 per annum, are to be paid to you. Any dividends above this amount are to be paid to me; but I shall be bound to return to you all dividends received by me if I do not exercise my option to redeem the stock.

One advantage of this plan not to be overlooked in the security to E. I. duPont de Nemours & Company through the holding of this additional collateral.

It would be unfair to close this letter without expressing my appreciation of the good work that has been done by members of the Executive Committee under the very trying experience of recent months and my confidence that their guidance will restore the Company's earning power and, hence, the value of the common stock, as soon as general business conditions permit. One can not overestimate the value of cooperation and confidence. I believe that the success of the Company has been built upon these values, and I hope that succeeding years will only add to their abundance. I feel it an honor to work with you and hope that the offer of this letter will be received favorably as a further binding of ties that need no strengthening."

25. The offer made by the plaintiff, embodied in Finding No. 24, was duly received by the respective addressee, and the proposals therein contained were accepted by the respective committeemen. The shares of Christiana Securities Company stock were delivered in accordance with the terms of the agreements so made.

26. On June 15, 1920, the du Pont Company paid a stock dividend of  $2\frac{1}{2}$  per cent. On September 15, 1920, the du Pont Company paid a stock dividend of  $2\frac{1}{2}$  per cent.

On each of these dates plaintiff delivered to Christiana Securities Company 225 shares of du Pont common stock, representing the stock dividends on 9000 shares. On December 15, 1920, the du Pont Company paid a stock dividend of 2½ per cent. On December 27, 1920, plaintiff borrowed 450 shares of du Pont common stock from the Christiana Securities Company. On December 15, 1922, the du Pont Company paid a stock dividend of 50 per cent. On January 4, 1923, plaintiff entered into a supplementary contract with the Christiana Securities Company, a copy of which is Exhibit F which is made a part of these findings.

27. On August 10, 1925, the du Pont Company paid a stock dividend of 40 per cent. On August 10, 1925, plaintiff entered into a supplementary contract with the Christiana Securities Company, a copy of which is Exhibit G which is made a part of these findings.

28. On October 28, 1926, the du Pont Company issued two shares of no par common stock in exchange for each outstanding \$100-par share. On October 28, 1926, plaintiff entered into a supplementary contract with the Christiana Securities Company, a copy of which is Exhibit H which is made a part of these findings.

29. On January 21, 1929, the du Pont Company issued three and one-half shares of \$20 par value common stock in exchange for each outstanding no par share. On January 21, 1929, plaintiff entered into a supplementary contract with the Christiana Securities Company, a copy of which is Exhibit I which is made a part of these findings.

30. The agreement of December 23, 1919, between the plaintiff and Christiana Securities Company, expired by its own terms upon December 23, 1929.

31. On October 25, 1929, plaintiff entered into a written agreement with the Delaware Realty & Investment Company, a corporation in which he was not a stockholder, a copy of which is Exhibit S which is made a part of these

findings. The agreement referred to was not entered into by the plaintiff with the Delaware Realty & Investment Company with the intention or purpose of making a profit thereby.

The 142,212 shares of the du Pont Company stock were received by the plaintiff and were delivered by him to the Christiana Securities Company in discharge of his obligation under the contract described in Findings 16 and 24 to 27, above.

32. During the year 1929 the plaintiff returned 300 shares of the common stock of E. I. du Pont de Nemours & Company to the Delaware Realty & Investment Company, thus reducing his obligation to that company to 141,912 shares. During the year 1931 the E. I. du Pont de Nemours & Company paid dividends on its common stock amounting to \$4 per share and in accordance with the agreement with the Delaware Realty & Investment Company dated October 25, 1929, the plaintiff paid to the said company a sum of \$567,648, which was an amount equal to the dividends declared and paid upon the stock borrowed under said agreement and not returned.

33. During the calendar year 1931 the plaintiff paid to the Delaware Realty & Investment Company, in accordance with the terms of his agreement with said company dated October 25, 1929, the amount of \$80,063.56, being an amount equal to federal income taxes asserted against and paid by the Delaware Realty & Investment Company for the calendar year 1930 on account of the receipt by the Delaware Realty & Investment Company from the plaintiff in that year of payments made by the plaintiff under said agreement of October 25, 1929.

34. On his Federal income tax return for the calendar year 1931 the plaintiff claimed and took as a deduction from gross income on line 13, under the heading "Interest Paid," the sum of \$567,648, being the sum mentioned in paragraph 32 above. The plaintiff did not claim or take as a deduction

from gross income on his return the sum of \$80,063.56 mention in finding 33 above. The Commissioner of Internal Revenue in determining the tax liability of the plaintiff for the calendar year 1931 and in assessing and collecting the deficiency in tax of \$142,466.79 and interest thereon of \$29,884.85, refused to allow as deductions the above-mentioned amounts of \$567,648 and \$80,063.56, a total of \$647,711.56, paid by the plaintiff to the Delaware Realty & Investment Company.

35. The plaintiff made his return and kept his books for the calendar year 1931 on a cash receipts and disbursements basis.

36. The plaintiff had in 1919, 1920 and 1931, large and diversified investments in stocks and securities. His gross income, as shown by his Federal income tax return for the year 1931 was:

Salaries, wages and commissions	\$20,640.78
Interest on bank deposits, notes, corporation bonds, etc.	336,748.05
Rents and royalties	4,876.00
Dividends on stock of domestic corporations	1,475,046.54
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	\$1,837,311.37

The plaintiff in December 1919, was, and since that time has continued to be, the chairman of the Board of the du Pont Company and a member of its finance committee. At that time, viz.: December, 1919, the plaintiff was a stockholder and a director of the General Motors Corporation, Chatham & Phoenix Bank, Philadelphia National Bank, Bankers Trust Company and other corporations. In 1919 he devoted more or less 50 per cent. of his time to his investments, which consisted in a large part of du Pont Company stock, although he had other investments in securities of different corporations. He changed his investments from time to time by the sale and purchase of securities but he

was not a speculator and had practically no investments in brokerage accounts. By the year 1929 he had parted with a large part of his du Pont Company stock but he retained a large ownership in the stock of the Christiana Company. In 1929, his largest holdings were in General Motors Corporation. He is unable to state what portion of his time he devoted to the concerns of the General Motors Corporation or to the concerns of the du Pont Company, but his connection with the General Motors Corporation, beginning in 1921 and continuing until some time in 1924, was for the purpose of promoting the interest of the du Pont Company, which was a large stockholder in General Motors. In 1919 the plaintiff maintained an office in Wilmington, Delaware, for the conduct of his business affairs. He had seven or eight employees in his office at that time. In 1920 he established an additional office in New York for the conduct of his business. He has maintained both such offices ever since such years. The expense of maintaining such offices was \$36,310.67 in 1931. In 1931 plaintiff sold 63,346 shares of stock in various corporations in which he was a stockholder.

37. The plaintiff's business was primarily that of conserving and enhancing his estate.

He embarked upon his whole course of conduct with the primary intention and purpose and to the end that his beneficial stock ownership in the du Pont Company might be conserved and enhanced.

He did not enter into the respective individual agreements and transactions, heretofore referred to, with the nine committeemen, with the Christiana Company or with the Delaware Realty & Investment Company, with the purpose or intention, or to the end, that he might profit by any of these respective individual transactions.

#### CONCLUSIONS OF LAW.

1. I find that the plaintiff is not entitled to deduct from his gross income for the year 1931 either the sum of \$567,648 or the sum of \$80,063, paid by him to the Delaware Realty

& Investment Company during that year for the purpose of computing his taxable net income.

2. The plaintiff is entitled to judgment against the defendant in the sum of \$54,439.52, with interest, as stipulated by the parties.

#### OPINION.

##### *Biggs, Circuit Judge*

The plaintiff, Pierre S. duPont, has sued Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, pursuant to the provisions of Section 3226 of the Revised Statutes, June 6, 1932, c. 209, Sec. 1103(a), 47 Stat. 286 (26 U. S. C. A. 1672, 1673) to recover income taxes assessed against the plaintiff for the year 1931, in the amount of \$142,466.79, together with interest thereon in the amount of \$29,884.85, comprising a total of \$172,351.64.

At the time of the trial a stipulation, duly entered into by the parties, was filed with this court, whereby it was agreed by the defendant that the plaintiff was entitled to a judgment of \$54,439.52 upon one of the issues involved herein and would be entitled to a judgment in the sum of \$172,351.64 if he was held to be successful upon the questions presented by the remaining issue.

That issue can be stated broadly as follows. Is the plaintiff entitled to certain deductions claimed by him in computing his net income for the taxable year in question, viz: 1931? To understand the question presented it is necessary to give a brief statement of the facts involved.

Following the end of the World War, the plaintiff, as an individual the largest beneficial owner<sup>1</sup> of the stock of the E. I. duPont de Nemours & Company, aware that the company would be compelled by changing circumstances to engage in business other than the manufacture of explosives, felt, as did other responsible heads of the company,

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<sup>1</sup> An individual as distinguished from a corporate holding. The Christiana Securities Company had the largest single holding of the duPont Company stock.

that a new management should be put in charge of its peace-time affairs. As a result, a new executive committee, comprising nine members, was created. The responsible officers of the du Pont Company, including the plaintiff, felt it to be essential that these nine men should be compensated not only by way of salaries and bonuses, but also that each of them should have that interest in the future success of the company best achieved by stock ownership. It was first proposed that the nine executives should receive each 1000 shares of the stock of the company as compensation for future services but since the law of Delaware forbade such a course, another plan was worked out, as follows. After discussion and the agreement of all concerned, the plaintiff undertook to sell to the nine committeemen each 1000 shares of the common stock of the du Pont Company, at an agreed price just under book value, viz: at a price of \$320 per share.<sup>2</sup> It should be noted that the transaction referred to occurred before the listing of the stock of the du Pont Company under the New York Stock Exchange. Testimony was given at the trial of this cause indicating that the market for the common stock of the du Pont Company was very thin and the purchase of the 9000 shares would have augmented substantially the price per share. The du Pont Company loaned to each of the committeemen the necessary funds to purchase his aliquot portion of the stock and the plaintiff received the purchase price stipulated by him. In short, the plaintiff sold 9000 shares of the common stock of the du Pont Company to the nine committeemen at a price of \$320 a share and received the proceeds therefrom.

The sale just described was a short sale, for at this time the plaintiff was not the legal owner of sufficient stock to consummate the transaction. He was, however, the president and a director of Christiana Securities Company and the holder of a very substantial block of the stock of that company. Pursuant to a contract entered into between the plaintiff and the Christiana Company upon December 23,

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<sup>2</sup> The book value was shown to be \$320.94 a share.

1919, this company loaned to the plaintiff 9000 shares of the common stock of the du Pont Company, which were in fact the shares sold by him to the members of the executive committee. By the agreement just referred to the Christiana Company required that the 9000 shares of stock so loaned by it to the plaintiff should be paid back to it in kind within ten years and, further, that the plaintiff pay to the Christiana Company sums equivalent to all dividends which might be paid by the du Pont Company upon the 9000 shares of stock so loaned until the loan was repaid. It should be here noted that the directors of the Christiana Company in the resolution authorizing the loan of the stock to the plaintiff recited that Christiana Securities Company was the principal stockholder of the du Pont Company and as such was deeply interested in the success of that company. The contract of December 23, 1919, was modified subsequently to the extent that the plaintiff was required to reimburse and did in fact reimburse the Christiana Company for Federal income taxes imposed upon that company by reason of the receipt of the dividends upon the 9000 shares of stock paid to it by the plaintiff in accordance with the contract.\*

By March 9, 1921, the stock of the du Pont Company had declined largely in value. The bargain made by the nine committeemen had become a disadvantageous one and was the subject of considerable discussion. In a memorandum from Irene du Pont to the plaintiff, written about March 10, 1921, the following appears: "From the Committeemen's point of view, each has made a bad bargain. From the Company's point of view, the bargain was a bad one, because certainly a majority of the Committeemen are more or less disturbed over their financial condition . . .". The plaintiff thereupon, by letters written by him to each of the committeemen, made plain that he had no intention of making any profit upon the sale of the 9000 shares of du

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\* Though there were other modifications from time to time as required by the declaration of stock dividends by the duPont Company, these modifications are not pertinent to the legal questions involved.

Pont Company stock to them and proposed to assign to each of the committeemen 400 shares of stock of the Christiana Company, possessing value of \$160,000, but with an option reserved in the plaintiff to enable him to redeem these shares by payment of the sum of \$160,000 to the committeemen at the time of the maturity of the loans made to them by the du Pont Company and heretofore referred to. This offer was accepted by the committeemen and the stock of the Christiana Company was assigned to them by the plaintiff in accordance with the terms of the letters.

As the ten year period, dating from December 23, 1919, drew to a close, the plaintiff, upon October 25, 1929, entered into an agreement with Delaware Realty and Investment Company whereby that company undertook to loan to the plaintiff the necessary shares of du Pont common required by him to repay his loan of stock to the Christiana Company. It should be here noted that the contract of October 25, 1929, between the plaintiff and the Delaware Company, recited that the plaintiff was not "at this time contemplating the closing of the short sale transaction of December, 1919 . . .".

The terms of the plaintiff's contract with the Delaware Company provided that he would return the du Pont Company stock borrowed from it in kind within ten years after October 25, 1929, would pay to it an amount equivalent to all dividends declared by the du Pont Company upon the shares borrowed, and would reimburse the Delaware Company for all taxes paid by it by reason of the receipt by it from the plaintiff of the sums equivalent to the dividends declared upon the stock borrowed. In 1931, the taxable year in question, the plaintiff paid to the Delaware Company the sum of \$567,648, being the amount equivalent to the dividends paid by the du Pont Company upon the shares for which he was then indebted.<sup>4</sup> In addition thereto the plain-

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<sup>4</sup> i. e., 141,912 shares, the plaintiff having returned 300 shares in 1929. It should be borne in mind that shares of the common stock of the du Pont Company had been augmented from time to time by stock dividends until the original 9000 shares reached a total of 142,212 shares.

tiff paid to the Delaware Company the sum of \$80,063.56, which was in fact the amount of Federal income tax imposed upon the Delaware Company by reason of the payments equivalent to the sum of declared dividends which it had received from the plaintiff. The total of these two items, \$647,711.56, is the amount of the deduction to which the plaintiff claims he is entitled in the suit at bar. Whether the plaintiff is or is not entitled to such deduction is the precise issue here presented.

The facts in the case at bar have been largely stipulated and no pertinent facts, other than what may be described as the intent or purpose of the plaintiff in embarking upon the course of conduct and the transactions here involved, are in controversy.

#### THE QUESTIONS OF LAW PRESENTED.

The plaintiff makes five contentions. They may be summed up as follows: The sums claimed by way of deduction are deductible because they were (1) ordinary and necessary business expenses; (2) losses sustained during the taxable year, 1931, incurred in the plaintiff's business; (3) payments required to be made by the plaintiff as a condition to the continued use of property in which the plaintiff had no equity; (4) interest on the indebtedness of the plaintiff; or, (5) if not losses sustained in the plaintiff's business, were losses in a transaction entered into by the plaintiff for profit. If any one of these five contentions is deemed to be valid by the court, the plaintiff must prevail.

The pertinent statutory provisions are contained in Section 23 of the Revenue Act of 1929, and are set out hereafter:

#### "SEC. 23. DEDUCTIONS FROM GROSS INCOME.

"In computing net income there shall be allowed as deductions:

"(a) Expenses.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for

personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

“(b) Interest.—All interest paid or accrued within the taxable year or indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title.”

“(e) Losses by individuals.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck or other casualty, or from theft.”

(1) and (2) A. *Were the Amounts Paid by the Plaintiff Ordinary and Necessary Expenses, or Losses Incurred in the Plaintiff's Business within the Taxable Year?*

Since the questions presented under this heading are largely analogous, it seems appropriate to discuss the cases relating to both grounds as if they were in a single category, pointing out, however, the pertinent distinctions that occur in each case in relation to the case at bar. For the plaintiff to avail himself of the deduction upon either ground herein suggested by him, the sums paid by him must be held to be ordinary and necessary expenses paid or incurred in carrying out the plaintiff's trade or business, or

losses incurred in his trade or business, falling respectively within the provisions of subsection (a) or subsection (e)(1) of Section 23 of the Revenue Act of 1928.

It is conceded that the plaintiff was not a dealer or trader in securities and that he was not one who devoted his time to buying and selling securities through brokers as a matter of speculation. He contends, however, that he ". . . was engaged in the business of managing, protecting and conserving his investments, involving many millions of dollars". The record establishes the facts that the plaintiff had the largest beneficial interest of any single individual in the du Pont Company, was chairman of its board, was a stockholder in General Motors Corporation, in which the du Pont Company was also a stockholder, was a director of General Motors Corporation and had other varied and substantial interests. It is contended by the plaintiff that the word "business", as used throughout the statute as quoted, will embrace the plaintiff's activities and that the expenditures of the sum of \$647,711.56, claimed as a deduction from the plaintiff's gross income, was an essential part of the plaintiff's business activity.

The plaintiff's position may be summed up succinctly by the following statement appearing upon his brief: "He (the plaintiff) believed that it was good business and that he would profit by the sale of stock to members of the executive committee. He felt that he was making them partners in the business (of the du Pont Company) and that because of his large interest in the company he would be naturally benefited." While the plaintiff himself testified only that he believed in the policy of paying the men who were responsible for the conduct of the du Pont Company's affairs good salaries and, if possible, giving them an interest in the company as stockholders, none the less we believe that the statement from the plaintiff's brief, quoted above, sets out his position and that this conclusion is a fair inference to be drawn from the record as a whole. In this connection it should be noted that the plaintiff stated

to Walter S. Carpenter, one of the committeemen, by his letter of April 1, 1921,<sup>5</sup> that it was his purpose to recognize the work done by the committeemen for their company and to encourage them in further efforts to benefit themselves and the other stockholders by placing them in a position to share in corporate profits. In short, the plaintiff felt that by benefiting the members of the executive committee he would benefit the corporation and himself as a stockholder of the corporation. Other motives may have actuated the plaintiff's course of conduct. As former president of the du Pont Company, and as chairman of its board of directors, he had contributed substantially to the success of the company in the past. He doubtless, therefore, had a sentimental interest in its future welfare, but I think it is true and I find it to be a fact that the governing motive, intent and purpose behind the plaintiff's whole course of conduct was to enhance the value of his financial interest in the du Pont Company.

Now if the plaintiff is to recover upon either of the theories here referred to, he must bring his expenditures within the definition of ordinary and necessary expenses resulting from, or losses incurred in his business. The word "business" has been defined by the Supreme Court in *Flint v. Stone Tracy Co.*, 220 U. S. 107, 171, in such a way as to embrace nearly any activity; more narrowly in *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 515, wherein it was stated that a decision of this question must turn upon the particular facts of each case.

In *Dart v. Commissioner*, 74 F. (2nd) 845, dividends charged by brokers to the "short" accounts of taxpayers

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<sup>5</sup> In this letter the plaintiff stated in part: "While no plan of readjustment by E. I. du Pont de Nemours & Company, representing the body of stockholders, has seemed possible, I, as a large stockholder, and, perhaps, the one to be most benefited by the recovery in value of the Company's shares, suggest the following modification of the original transaction:—" There follows the details of the terms of the donation of the Christiana Company stock to the committeemen by the plaintiff.

engaged in speculating in stocks were held to be deductible as ordinary and necessary expenses pursuant to the provisions of Section 23 (a) of the Revenue Act of 1928 and therefore not chargeable as capital expenditures. It should be noted that here the charges which were allowed as deductions grew directly out of the speculations of the claimants and that the court held in effect that speculation in securities, or the buying and selling of securities, was the business of the taxpayers.

In *Kenan v. Bowers*, 48 F. (2nd) 263, the court held, interpreting Section 5 of the Revenue Act of 1916 (39 Stat. 759), that a beneficiary of a trust estate could not deduct from her individual gross income additional compensation paid by her to the trustees because she did not own the property upon which the services were expended and would receive only a negligible part of the fruits of the trustees' labors in respect to that property. This holding is to the effect that the protection of a trust estate is not the business of a cestui que trust and that therefore the payments made by the taxpayer did not stem directly out of the taxpayer's business.

In *Commissioner v. Field*, 42 F. (2nd) 820, 823, it was held that the payment of compensation to attorneys in a suit to determine a taxpayer's rights in an estate fell within those general costs of protecting property for which the statute made no allowance.

In *Foss v. Commissioner*, 75 F. (2nd) 326, it was held that a taxpayer, compelled by reason of his business activities in respect to two certain corporations to expend attorneys' fees to defend himself in a suit brought by the minority stockholders of one such corporation might deduct these fees as ordinary and necessary expenses pursuant to the provisions of Section 214(a)(1) of the Revenue Act of 1918. The court stated, "The line (of demarcation as to deductible and non-deductible expenses) comes between those who take the position of passive investors, doing only what is necessary from an investment point of view, and those who

associate themselves actively in the enterprises in which they are financially interested and devote a substantial part of their time to that work as a matter of business." This is in effect a holding that the extent of the business activity of the taxpayer constitutes the test of deductibility of expenditures. But it should be pointed out that in the cited case expenditures arose directly out of the business activities of the taxpayer.

In *Commissioner v. People's-Pittsburgh Trust Company*, 60 F. (2nd) 187, it was held that money expended by a taxpayer for attorney's fees in the successful defense of a criminal suit based upon an alleged false affidavit made by him as chairman and principal executive head of a steel company were deductible under the provisions of Section 214(a)(1) of the Revenue Act of 1921 (42 Stat. 239) as ordinary and necessary expenses incurred in carrying on a trade or business. In this case the court held that these expenses were directly attributable to the taxpayer's business which was stated to be that of an executive head of a steel company.

The cases cited seem to set forth a common principle, namely, that an expense is deductible by the taxpayer if it arises *directly*, that is to say *proximately* out of the course of business which the taxpayer is regularly carrying on and can fairly be described as an "ordinary and necessary" expense thereof. This principle was clearly enunciated by the Supreme Court in *Kornhauser v. United States*, 276 U. S. 145, 153, wherein a taxpayer, a lawyer, who successfully defended an accounting suit brought by his former partner for an accounting for shares of stock which the taxpayer had received for professional services, was allowed to deduct a fee for the counsel defending the suit. The Supreme Court stated that the correct basis of such holding was ". . . where a suit or action against a taxpayer is directly connected with, or . . . proximately resulted from, his business, the expense incurred is a business expense within the meaning of Section 214(a), subdivision (1) of the act."

Bearing in mind the principle enunciated by the Supreme Court that expenses may be deducted if proximately resulting from or directly connected with a business, I deem it desirable at this point to refer to certain cases dealing with losses attempted to be deducted as incurred in a trade or business.

In *Goldberg v. Commissioner*, 36 F. (2nd) 551, it was held that a loss, sustained by the taxpayer in a business transaction resulting from the purchase and subsequent sale by the taxpayer of a house, was not deductible as a loss occurring in a "regular trade or business" within the provisions of Section 204(a) of the Revenue Act of 1921, (42 Stat. 227, 231). Here, though the taxpayer was president, treasurer and sole stockholder of a corporation which was engaged regularly and constantly in the purchase and sale of real estate, the court held that when the taxpayer made a purchase and sale of real estate on his own account, such was not within the scope of his ordinary business.

In *Rogers v. United States*, 41 F. (2nd) 865, 868, a physician, having invested his earnings in a stock transaction which resulted in a loss, was not allowed to deduct this loss as resulting from "any trade or business regularly carried on" by him within the provisions of Section 204 (a) and (b) of the Revenue Act of 1921 because the court was of the opinion that this loss resulted from an isolated business transaction despite the fact the physician devoted much of his time to conserving and maintaining his estate. The court treated his efforts in this direction as an "avocation".

In *Washburn v. Commissioner*, 51 F. (2nd) 949, it was held that a taxpayer who sold at a loss stock of a corporation which he was managing, could deduct such loss as being incurred in a business regularly carried on by him within the provisions of Section 204 (a) and (b) of the Revenue Act of 1921. The court stated, "We think the line here is not difficult to draw. The business of petitioner was

not merely looking after investments or reaping the return of past labor, represented thereby. He had an office with a complete organization, and gave personal attention to, and participated in, the management of these various companies and enterprises in which he had the investments, not for the purpose of conserving them merely, but of carrying them on successfully and making them profitable. To this he gave his entire time, receiving no salary, except such as might cover his expenses. His work for these different enterprises was not merely sporadic, but was a continuous and regular carrying on." In the cited case the court distinguishes between the business of conserving an investment and enlarging it; in effect stating that he who makes an investment more profitable by devoting most or all of his time to it may avail himself of a deduction, where he who seeks to conserve an investment by sporadic devotion of his time and energy to that end cannot be favored by the statute.

But in my opinion the decision in *Washburn v. Commissioner*, supra, has been overruled by the decision of the Supreme Court in *Burnet v. Clark*, 287 U. S. 410, in which a taxpayer who was the majority stockholder and president of a corporation incurred substantial losses by reason of his purchase of its stock and by his endorsement of its notes. He claimed these losses as deductions under Sections 204(a) and (b) of the Revenue Act of 1921. In delivering the opinion of the Supreme Court, Mr. Justice McReynolds said, "The respondent was employed as an officer of the corporation; the business which he conducted for it was not his own. There were other stockholders. And in no sense can the corporation be regarded as his *alter ego*, or agent. He treated it as a separate entity for taxation; made his own personal return and claimed losses through dealings with it. He was not regularly engaged in endorsing notes, or buying or selling corporate securities. The unfortunate endorsements were no part of his ordinary business, but occasional transactions intended to preserve the value of his investment in capital shares."

In *Dalton v. Bowers*, 287 U. S. 404, the taxpayer formed a corporation for the purpose of manufacturing and selling articles patented by him. He purchased all of the capital stock of the corporation and took active charge of its affairs. The business proved unprofitable and from time to time he made loans to the corporation to pay its debts. He attempted to deduct the losses thus occurring to him as "attributable to the operation of a trade or business regularly carried on" by him within the meaning of Section 206(a) and (b) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 260. The Supreme Court held that the trade or business of the corporation was not a trade or business carried on by the taxpayer and the losses so sustained by him were not deductible. Very similar in legal effect is the decision in *Mastin v. Commissioner*, 28 F. (2nd) 748, in which the taxpayer paid for advertising real estate owned by a corporation in which he was a stockholder and sought to deduct the sums thus paid as losses under section 214(a) of the Revenue Acts of 1919 (40 Stat. 1057), and 1921 (42 Stat. 227). The court stated, "The payment was therefore made, not by petitioner to advertise his own real estate, not by the corporation to advertise real estate owned by it, but by petitioner as a voluntary one. It was, in our opinion, a capital expenditure, which might enhance the value of petitioner's stock by increasing the value of the lands of the corporation. It was not a loss within the meaning of the statute under discussion."

See also *Burnet v. Commonwealth Improvement Company*, 287 U. S. 415; *Van Dyke v. Helvering*, 291 U. S. 642; and *McGinn v. Commissioner*, 76 F. (2nd) 680.

In my opinion the sums paid by the plaintiff cannot be deducted by him from his gross income as ordinary and necessary expenses incurred by him in carrying on his trade or business for two reasons.

First, the sums paid by the plaintiff cannot be brought within the principle enunciated by the Supreme Court in *Kornhauser v. United States*, *supra*. The plaintiff made

the payments in question for the same reasons that actuated his entire course of conduct, viz, because he hoped that he might profit through the enhanced value of the stock of the du Pont Company beneficially owned by him. This was his hope, his expectation, and though eminently reasonable and well sustained by subsequent events, none the less it is obvious that there is no proximate causation, or direct connection, between the payment by the plaintiff of the sums to the Delaware Company here sought to be deducted by him and the enhancement of the stock ownership of the plaintiff in the du Pont Company. In fact one might bring the payment of funds by the plaintiff one stage closer to the ultimate result sought by him, without rendering such sums deductible. For example, if the plaintiff, out of his own pocket, had increased the pay of chemists employed by the du Pont Company with the hope that by reason of such increase they would work more effectively to improve the processes of the du Pont Company, perhaps thereby increasing the value of the plaintiff's stock, I conceive that it would not be contended that these payments would be deductible by the plaintiff from his gross income under the theory here advanced by him.

Second, the expenditures here in litigation cannot be deemed to be ordinary and necessary. The course of conduct evoking them was in fact so extraordinary as to occur in the lives of ordinary business men not at all, and in so far as this record shows in the business life of the plaintiff but once. As was said by Mr. Justice Cardozo, in *Welch v. Helvering*, 290 U. S. 111, 114. "There is nothing ordinary in the stimulus evoking it, and none in the response." The payments here in question were beyond the norm of general and accepted business practice. In this sense they must be deemed to be extraordinary.

Can they be treated as losses sustained within the taxable year and incurred by the plaintiff in his business? The transactions of the plaintiff in respect to the du Pont Company's stock were in fact isolated transactions; that is to

say, were distinctly unlike separate and apart from the usual methods pursued by the plaintiff in the business of conserving and enhancing his estate. Losses growing out of such isolated transactions ordinarily are not deductible. *Mente v. Eisner*, 266 F. 161, 162. Aside from this, however, and as indicated heretofore, such losses to be deductible must be directly connected with or proximately resulting from the business of the taxpayer. The facts of the case at bar seem closely analogous to those in *Mastin v. Commissioner*, *supra*, wherein recovery was denied to the taxpayer, the court holding that the expenditures were capital expenditures made by the taxpayer with the hope of enhancing the value of his stock through increasing the asset value of the corporation.

In my opinion the plaintiff cannot be allowed to deduct the sums in question upon either of the grounds here discussed.

*B. As to the Narrower Ground Contended for by the Plaintiff: that the Payments by him to the Delaware Company Enabled him to Conserve and Enhance his Estate.*

The plaintiff contends however that his position must be sustained upon a much narrowed ground. He states this as follows. By borrowing stock, from the Delaware Company, the plaintiff was not compelled to expend money or securities to cover his short transaction with the Christiana Company; such money or securities remained as part of his estate and conserved and enhanced it. Therefore the sums here sought as deductions, which are in fact the carrying charges paid by the plaintiff to the Delaware Company for the borrowed stock, are necessary and ordinary expenses incurred by him in carrying on his business.

This contention seems to me to be without merit. It will be observed that the argument must rest upon the fundamental proposition that the plaintiff's transaction with the Delaware Company was for profit. It is clear that the original transaction with the Christiana Company was

not for profit, for in April, 1921, when the short sale might have been profitably covered the plaintiff gave Christiana Company stock, having a value of \$1,440,000, to the nine committeemen, and in effect thereby disavowed any intention of profiting by the short sale.

There is no reason why the plaintiff's dealings with the Delaware Company should be considered as being upon another or different basis. Certainly there is no evidence in the record which serves to indicate that the plaintiff entered into the transaction with the Delaware Company with any different end in view than that which actuated his dealings with the Christiana Company. The contract of October 25, 1929, specifically sets forth that the plaintiff did not contemplate at that time the closing of the short sale transaction. That the transaction with the Christiana Company was closed is a fact, but the phrase referred to tends to indicate that the plaintiff did not consider his dealings with the Delaware Company to be upon any different basis.

At the time of the short sale, it would have been difficult and indeed expensive for the plaintiff to have purchased 9,000 shares of du Pont Company stock in the open market. It was for this reason that the plaintiff borrowed the stock rather than purchased it. To this extent, and to such extent only, his action might have served to enhance his estate, but a finding that he sought to enhance his estate by such a method is incompatible with the facts made manifest by his entire course of dealing with the committeemen. Had he intended to enhance his estate by keeping invested money or securities which otherwise he would have had to pay out, he would not have embarked upon his entire course of conduct which from its beginning until the present time certainly has proven less profitable than covering his short transaction. The plaintiff's course of conduct was not trivial. It was based upon a broader plan.

The plaintiff was not engaging in a course of speculation which might prove profitable if he was able to cover

his short sale at a lesser price upon some future date. The hope of profit is inherent in the ordinary short sale and under *Dart v. Commissioner*,<sup>6</sup> *supra*, carrying charges were deemed to be deductible. In the case at bar, however, when the short sale by reason of changing circumstances and market conditions gave the possibility of a profit, the plaintiff was quick to disavow such an advantage. Such action was entirely inconsistent and incompatible with his present narrow contention.

The plaintiff's original transaction with the committee-men, and his subsequent donation of the stock of the Christiana Company to them, was deemed by the plaintiff to be a prerequisite for the conservation and enhancement of his stock interest in the du Pont Company, for by these steps he believed that a sound corporate management would be achieved. The end result sought by the plaintiff was profit by way of the enhancement of his stock interest, but he did not seek to profit by the intermediate steps whereby that result was to be achieved.

The plaintiff must also fail upon the narrower grounds which he has here asserted.

3. *As to the Contention that the Payments were Made for the Continued Use of Property in which the Plaintiff was without Equity, within the Meaning of Subsection (a) of Section 23.*

In view of the language of the subsection which requires rentals or payments to be made for the purposes of the trade or business of the taxpayer if they are to be deemed deductible, I am of the opinion that such rentals or payments must also result proximately from or be directly connected with the business of the taxpayer. Since the payments in the case at bar cannot be so described,

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<sup>6</sup> In my opinion *Dart v. Commissioner* can be otherwise distinguished from the case at bar. *Terbell v. Commissioner*, 29 B. T. A. 44, affirmed per curiam, 71 F. (2nd) 1017, can likewise be distinguished.

this contention of the plaintiff must also be disposed of unfavorably to him upon the same grounds as are indicated in the ruling upon points (1) and (2), *supra*. I deem it desirable, none the less, to discuss briefly other contentions raised by the parties under this heading.

The shares of du Pont Company stock borrowed by the plaintiff from the Delaware Company are still owing from the plaintiff to that company and the transaction is still open. These shares were received by the plaintiff pursuant to the terms of the contract of October 25, 1929, and he delivered these shares to the Christiana Company in fulfillment of his obligation.

The plaintiff contends that the 141,912 shares of stock of the du Pont Company which he had borrowed from the Delaware Company were in continued use in his business as an investor, for by continuing his obligation to the Delaware Company unretired he was enabled to keep invested in other income producing securities as much money as it would cost him to discharge his obligation to the Delaware Company. He contends further that since he was required to pay to the Delaware Company, as a condition to such use, sums equivalent to dividends declared and taxes assessed, that therefore the total of these sums was deductible as rentals or other payments required within the terms of the statute.

These contentions are without merit. First, an obligation to pay is not property in so far as the obligor is concerned and cannot be so considered. Second, there was no "continued use or possession" of the stock by the plaintiff within the terms of the statute. He used the stock *once*, in 1929, for the purpose of discharging his obligation to the Christiana Company. He did not use it again. In fact, he could not use it again because he did not have possession of it after 1929. The sums which he now seeks to deduct were in fact paid by him pursuant to his contract with the Delaware Company and were simply part of the conditions under which the stock came into his hands. He had title

to the stock when it was received by him from the Delaware Company and he transferred that title to the Christiansa Company when he discharged his obligation to it. The statute is specific in that it allows as deductions from gross income only "rentals or other payments required to be made as a condition to the continued use or possession . . . , of property to which the plaintiff has not taken or is not taking title or in which he has no equity."

Finally, the plaintiff contends that a fair interpretation of that portion of the statute just quoted requires the final "or" must be considered to have effect as a disjunctive preposition and that therefore the statute should be made to read as if the words were, "Rentals or other payments required to be made as a condition to the continued use of the property in which the taxpayer has no equity." However, he cites no authorities in support of this contention and in my opinion it is contrary to the plain intendment of the statute, which states three conditions which must be fulfilled before the taxpayer is authorized to make the deduction sought. That such is the correct interpretation of the phrase "to which the taxpayer has not taken or is not taking title or in which he had no equity" is plain, because the first "or" in the phrase quoted clearly indicates that deductions for the use or possession of property cannot be made by the taxpayer if he has either taken title or is taking title to the property. In other words the deduction cannot be availed of if the taxpayer has brought himself into either category prohibited by the statute. There is nothing upon the face of the statute which indicates any intention upon the part of Congress to impose a different interpretation in respect to the phrase "in which he has no equity" following the final use of the word "or."

*4. Are the Amounts Paid by the Plaintiff Interest on Indebtedness within the Meaning of Subsection (b) of Section 23?*

The plaintiff contends that the word "interest" means money paid for the forbearance of demanding payment of

a debt and that the word "debt" in turn means that which is due from one person to another, whether money, goods or services. See Webster's New International Dictionary. Applying these definitions to the facts of the case at bar, the plaintiff urges that his obligation to return the shares of stock borrowed from the Delaware Company to it in kind is a debt, and that the sums paid by him, representing the dividends upon the stock and taxes, are interest on the debt, viz; the price of the forbearance by the Delaware Company to collect the stock.

In the case at bar, the plaintiff made a short sale. It is customary upon a short sale of stock for sums, the equivalent of the dividends paid upon the shares borrowed, to be paid by the borrower to the lender of the stock until the short sale is covered. These sums, however, are not commonly referred to as interest, and a search discloses no case in which carrying charges upon a short sale have been treated as such. Interest is defined ordinarily as the compensation allowed by law or fixed by the parties for the use or forbearance of money. *City of Lincoln, Nebraska, v. Ricketts*, 77 F. (2nd) 425, 428; *Redfield v. Yatalyfera Iron Co.*, 110 U. S. 174, 176; *Loudon v. Taxing District of Shelby County*, 104 U. S. 771, 774; *Maryland Casualty Co. v. Omaha Electric Light & Power Co.*, 157 F. 514. In respect to the word "interest" as used in federal taxing acts, the word is accepted as meaning the compensation allowed by law or fixed by parties, for use, or forbearance or detention of money. *Fall River Electric Light Co. v. Commissioner*, 23 B. T. A. 168, 171; *Westerfield v. Rafferty*, 4 F. (2nd) 590, 594; *Appeal of Joseph W. Bettendorf*, 3 B. T. A. 378, 383; *New Orleans Land Co. v. Commissioner*, 29 B. T. A. 35, 38; *Dry Dock Bank v. American Life Insurance and Trust Co.*, 3 N. Y. 344, 355; *Hayes v. Commissioner*, 158 N. E. 539; *Title Guaranty and Surety Co. v. Klein*, 178 F. 689, 691; *Old Colony Railroad Co. v. Commissioner*, 284 U. S. 552.

I therefore conclude that the sums paid by the plaintiff cannot be deemed to be interest on indebtedness within the terms of the statute.

5. *Are the Sums paid Deductible as Incurred in a Transaction Entered into by the Plaintiff for Profit, though not Connected with his Business, Pursuant to the Provisions of Sub-section (e)(2) of Section 23?*

Can it fairly be said that the expenditure by the plaintiff of the sum here sought to be deducted was incurred in a transaction entered into by the plaintiff for profit "though not connected with the trade or business" of the plaintiff? Can the entire course of conduct of the plaintiff from December, 1919, until the end of the taxable year, 1931, be deemed to be a "transaction" within the meaning of the statute referred to? In my opinion the course of the plaintiff properly can be so defined,<sup>7</sup> but I am also of the opinion that the word "losses" as used by the statute refers not to interim sums required to be paid out by the taxpayer in the course of the transaction, but refers to actual losses suffered by the taxpayer as a result of the transaction. Such losses cannot be computed until a transaction has been completed or reaches a stage where the loss can be calculated. In the case at bar there is no evidence that the course of conduct of the plaintiff, considered as a whole, has resulted in any loss to him. Indeed, upon the contrary, there is some evidence of the enhancement of his estate through the advance in value of the du Pont Company stock beneficially owned by him, but it is impossible, for the reasons set forth in heading (1) and (2), *supra*, to calculate for tax purposes the profit or loss of the plaintiff growing out of his whole course of conduct even when the short transaction be closed. In my opinion the expenditures of the plaintiff, speaking generally, were in the nature of capital expenditures, but they may not be added to the cost of the plaintiff's holding of du Pont Company stock for the reason that these expenditures did not proximately result from and were not directly

<sup>7</sup> See the Century Dictionary and Cyclopedia, Vol. VIII; Webster's New International Dictionary; Bouvier's Law Dictionary.

connected with the conservation and enhancement of the plaintiff's stock in the du Pont Company.

Recovery must be denied to the plaintiff upon this ground as well.

**AS TO THE QUESTION OF DOUBLE TAXATION.**

The plaintiff contends that the sum here in question has been subjected to double taxation, having been taxed once as part of the income of the Delaware Company and again as part of the income (since he was not allowed to deduct it) of the plaintiff. The statement that Federal taxes have been assessed twice against the sum which the plaintiff here seeks to deduct is in fact correct. But under our system of income taxation taxes are assessed not against a fund but against the individual or corporation. Further it must be borne in mind that what the plaintiff did here, his entire course of conduct, was in fact most unusual and quite beyond the norm of business practice. No case has been found or cited which presents the precise questions here involved and the facts here involved in all probability could not have been adverted to by The Congress.

Accordingly, judgment will be entered for the plaintiff in the sum of \$54,439.52, with interest as stipulated by the parties. Judgment for the plaintiff in any larger sum will be refused.

Exceptions, if any, may be filed within thirty days.

(Sgd.) JOHN BIGGS, JR.,  
Circuit Judge.

And thereafter, on the twenty-second day of March, 1938, the plaintiff filed the following exceptions to the findings of fact and conclusions of law and opinion of the Court, viz.:

**PLAINTIFF'S EXCEPTIONS TO FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND OPINION.**

(Filed March 22, 1938.)

Plaintiff respectfully notes the following exceptions to the findings of fact, conclusions of law, and opinion of the Court entered herein on February 21, 1938:

(1) Plaintiff excepts to that portion of finding of fact No. 17, which reads, "The plaintiff did not have the purpose or intention of making a profit by the specific transaction of the sale of the 1000 shares of the common stock of the du Pont Company to each of the committeemen" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(2) Plaintiff excepts to that portion of finding of fact No. 18, which reads, "The agreement referred to was not entered into by the plaintiff with the Christiana Company with the intention or purpose of making a profit thereby" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(3) Plaintiff excepts to that portion of finding of fact No. 31, which reads, "The agreement referred to was not entered into by the plaintiff with the Delaware Realty & Investment Company with the intention or purpose of making a profit thereby" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(4) Plaintiff excepts to that portion of finding of fact No. 37, which reads, "He did not enter into the respective individual agreements and transactions, heretofore referred to, with the nine committeemen, with the Christiana Company or with the Delaware Realty & Investment Company,

with the purpose or intention, or to the end, that he might profit by any of these respective individual transactions" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(5) Plaintiff excepts to conclusion of law No. 1 as contrary to the evidence and to the law.

(6) Plaintiff excepts to conclusion of law No. 2 as contrary to the evidence and to the law.

(7) Plaintiff excepts to the statement of fact appearing in the opinion (page 18) reading, "The contract of December 23, 1919, was modified subsequently to the extent that the plaintiff was required to reimburse and did in fact reimburse the Christiana Company for Federal income taxes imposed upon that company by reason of the receipt of the dividends upon the 9000 shares of stock paid to it by the plaintiff in accordance with the contract" as being unsupported by any substantial evidence in the record and contrary to the evidence.

(8) Plaintiff excepts to the statement in footnote No. 3 to the opinion (page 18) as an erroneous conclusion of law, the contracts between plaintiff and Christiana Securities Company subsequent to the original contract of December 23, 1919 being highly pertinent and material to the issues of law herein.

(9) Plaintiff excepts to the statement of fact appearing in the opinion (page 19) reading, "The plaintiff thereupon, by letters written by him to each of the committeemen, made plain that he had no intention of making any profit upon the sale of the 9000 shares of du Pont Company stock to them" as being unsupported by any substantial evidence in the record and contrary to the evidence.

(10) Plaintiff excepts to the conclusions in that part of the opinion marked A (pp. 22-31) as being based upon misconstruction of the facts, in conflict with facts found, and erroneous in law.

(11) Plaintiff excepts to the statement in the opinion (page 30) reading, "it is obvious that there is no proximate causation, or direct connection, between the payment of the plaintiff of the sums to the Delaware Company here sought to be deducted by him and the enhancement of the stock ownership of the plaintiff in the du Pont Company" as being unsupported by any substantial evidence in the record and as contrary to the evidence, and erroneous in law.

(12) Plaintiff excepts to the statement in the opinion (page 30) reading, "Second, the expenditures here in litigation cannot be deemed to be ordinary and necessary. The course of conduct evoking them was in fact so extraordinary as to occur in the lives of ordinary business men not at all, and in so far as this record shows in the business life of the plaintiff but once. . . . The payments here in question were beyond the norm of general and accepted business practice. In this sense they must be deemed to be extraordinary" as being unsupported by any substantial evidence in the record and as contrary to the evidence, and erroneous in law.

(13) Plaintiff excepts to the statement in the opinion (page 31) reading, "The transactions of the plaintiff in respect to the du Pont Company's stock were in fact isolated transactions; that is to say, were distinctly unlike, separate and apart from the usual methods pursued by the plaintiff in the business of conserving and enhancing his estate" as being unsupported by any substantial evidence in the record.

(14) Plaintiff excepts to the conclusions in that part of the opinion marked B (pp. 31-33) as being based upon misconstruction of the facts, in conflict with facts found, and erroneous in law.

(15) Plaintiff excepts to the statement in the opinion (page 32) reading, "in April, 1921, when the short sale might have been profitably covered" as being unsupported by any substantial evidence in the record.

(16) Plaintiff excepts to the statement in the opinion (page 32) reading, "and in effect thereby disavowed any intention of profiting by the short sale" as being a wholly unjustifiable conclusion of fact based on no substantial evidence in the record.

(17) Plaintiff excepts to the statements in the opinion (page 32) reading, "Certainly there is no evidence in the record which serves to indicate that the plaintiff entered into the transaction with the Delaware Company with any different end in view than that which actuated his dealings with the Christiana Company. . . . That the transaction with the Christiana Company was closed is a fact, but the phrase referred to tends to indicate that the plaintiff did not consider his dealings with the Delaware Company to be upon any different basis" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(18) Plaintiff excepts to the statement in the opinion (page 32) reading, "To this extent, and to such extent only, his action might have served to enhance his estate, but a finding that he sought to enhance his estate by such a method is incompatible with the facts made manifest by his entire course of dealing with the committeemen" as being inconsistent with findings of fact made and with other statements of fact contained in the opinion.

(19) Plaintiff excepts to the statement in the opinion (pp. 32-33) reading, "Had he intended to enhance his estate by keeping invested money or securities which otherwise he would have had to pay out, he would not have embarked upon his entire course of conduct which from its beginning until the present time certainly has proven less profitable than covering his short transaction" as being unsupported by any substantial evidence in the record, as contrary to the evidence and as inconsistent with other statements of fact contained in the opinion.

(20) Plaintiff excepts to the statement in the opinion (page 33) reading, "The plaintiff was not engaging in a course of speculation which might prove profitable if he was able to cover his short sale at a lesser price upon some future date" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(21) Plaintiff excepts to the statement in the opinion (page 33) reading, "In the case at bar, however, when the short sale by reason of changing circumstances and market conditions gave the possibility of a profit, the plaintiff was quick to disavow such an advantage" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(22) Plaintiff excepts to the statement in the opinion (page 33) reading, "he did not seek to profit by the intermediate steps whereby that result was to be achieved" as being unsupported by any substantial evidence in the record and as contrary to the evidence.

(23) Plaintiff excepts to the conclusions in that part of the opinion marked 3 (pp. 34-36) as being based upon misconstruction of the facts, in conflict with facts found, and erroneous in law.

(24) Plaintiff excepts to the conclusions in that part of the opinion marked 4 (pp. 36-37) as being based upon misconstruction of the facts, in conflict with facts found, and erroneous in law.

(25) Plaintiff excepts to the conclusions in that part of the opinion marked 5 (pp. 37-38) as being based upon misconstruction of the facts, in conflict with facts found, and erroneous in law.

(26) Plaintiff excepts to the refusal of the Court to find that in 1933 the Commissioner of Internal Revenue determined that said \$80,063.56 paid by plaintiff to the Delaware Realty & Investment Company in 1931 was income to said company in that year, and that an additional tax was

due thereon, and that the plaintiff was called upon to and did in 1933 reimburse said company on account of said additional tax in the amount of \$9,607.98 together with interest thereon in the amount of \$663.98, a total of \$10,271.60.

(27) Plaintiff excepts to the refusal of the Court to find that the contract made by plaintiff with the Christiana Securities Company on December 23, 1919 was a transaction entered into for profit and in connection with his business of investor regularly carried on.

(28) Plaintiff excepts to the refusal of the Court to find that the contracts made by plaintiff with the Christiana Securities Company on January 4, 1923, on August 12, 1925, on October 28, 1926, and on January 21, 1929 were transactions entered into for profit and in connection with his business of investor regularly carried on.

(29) Plaintiff excepts to the refusal of the Court to find that the contract made by plaintiff with the Delaware Realty & Investment Company on October 25, 1929 was a transaction entered into for profit and in connection with his business of investor regularly carried on.

(30) Plaintiff excepts to the refusal of the Court to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were ordinary and necessary expenses of his business of investor.

(31) Plaintiff excepts to the refusal of the Court to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were payments required to be made as a condition to the continued use, for purposes of his business, of property in which plaintiff had no equity.

(32) Plaintiff excepts to the refusal of the Court to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were for interest upon his indebtedness to that company.

(33) Plaintiff excepts to the refusal of the Court to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were losses sustained during the taxable year in his business.

(34) Plaintiff excepts to the refusal of the Court to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were losses incurred during the taxable year in a transaction entered into for profit.

(35) Plaintiff excepts to the refusal of the Court to hold that plaintiff was entitled under Section 23 of the Revenue Act of 1928 to deduct from his gross income, in computing net income for 1931, the sums of \$567,648 and \$80,063.56 paid by him to the Delaware Realty & Investment Company during that year.

(36) Plaintiff excepts to the refusal of the Court to hold that plaintiff is entitled to judgment against defendant in the sum of \$172,351.64, with interest from September 24, 1935, according to law.

(Sgd.) RICHARDS, LAYTON & FINGER,  
*Attorneys for Plaintiff.*

IVINS, PHILLIPS, GRAVES & BARKER,  
*Of Counsel.*

And thereafter on the sixth day of April, 1938, the Court entered the following order overruling said exceptions, viz.:

"And now, to wit, this 6th. day of April, A. D. 1938, upon reading and considering plaintiff's exceptions to the findings of fact, conclusions of law and opinion filed herein February 21, A. D. 1938,

"It is ORDERED by the court that said exceptions, and each and all of them, be and hereby are overruled;

"And further, that judgment be entered in favor of the said Pierre S. du Pont, Plaintiff, and against the said Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, defendant, for the sum of fifty-four thousand four hundred thirty-nine dollars and fifty-two cents (\$54,439.52) with interest thereon from September 24, A. D. 1935.

(Sgd.) JOHN BIGGS, JR.,  
*Circuit Judge.*"

And thereafter counsel for the said Pierre S. du Pont did tender this bill of exceptions and did request the Judge before whom said cause was tried to authenticate and sign said bill of exceptions according to the form of statute in such case made and provided, which was done in Wilmington, in said District, this nineteenth day of May, 1938.

(Sgd.) JOHN BIGGS, JR.,  
*United States Circuit Judge.*

**JUDGMENT.**

(Entered April 6, 1938.)

And now, to wit, this sixth day of April, A. D. 1938, it is considered and adjudged by the Court now here that the said Pierre S. du Pont, plaintiff, do have and recover of and from the said Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, defendant, the sum of fifty-four thousand four hundred thirty-nine dollars and fifty-two cents (\$54,439.52) with interest thereon from September 24, A. D. 1935.

Attest:

(Sgd.) H. C. MAHAFFY, JR.,

Clerk.

**PETITION FOR APPEAL.**

(Filed April 27, 1938.)

Comes now Pierre S. du Pont, the above-named plaintiff, by Richards, Layton & Finger, his attorneys, feeling himself aggrieved by the judgment of this Court entered herein on the sixth day of April, 1938, in favor of the plaintiff for the sum of \$54,439.52 and interest does hereby appeal therefrom in so far as it awarded to the plaintiff only the amount conceded by defendant and denies the claim of the plaintiff for \$172,351.64 with interest from September 24, 1935, to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal be allowed, that a citation be issued directed to the above-named defendant commanding him to appear before the United States Circuit Court of Appeals for the Third Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of record, proceedings, and papers, upon which said judgment

was made, be duly authenticated and sent to the United States Circuit Court of Appeals for the Third Circuit in accordance with law and its rules in order that the errors complained of may be considered and corrected.

Dated at Wilmington, in the District of Delaware,  
April 27, 1938.

(Sgd.) RICHARDS, LAYTON & FINGER,  
*Attorneys for Plaintiff.*

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**APPELLANT'S ASSIGNMENTS OF ERROR.**

(Filed April 27, 1938.)

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1. The Court erred in refusing to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were ordinary and necessary expenses of his business.

2. The Court erred in refusing to find that the payments of \$567,648 and \$80,063.56 made by plaintiff to the Delaware Realty & Investment Company were for interest upon his indebtedness to that company.

3. The Court erred in refusing to hold that plaintiff was entitled under Section 23 of the Revenue Act of 1928 to deduct from his gross income, in computing net income for 1931, the sums of \$567,648 and \$80,063.56 paid by him to the Delaware Realty & Investment Company during that year.

4. The Court erred in entering judgment in favor of the plaintiff and against the defendant in the sum of only \$54,439.52 with interest thereon as provided by law.

5. The Court erred in refusing to enter judgment in favor of the plaintiff and against the defendant in the sum of \$172,351.64 with interest from September 24, 1935, according to law.

(Sgd.) RICHARDS, LAYTON & FINGER,  
*Attorneys for Appellant.*

April 27, 1938.

**ORDER ALLOWING APPEAL.**

(Filed April 27, 1938.)

Upon the petition of plaintiff herein praying an appeal from the judgment entered herein on the sixth day of April, 1938, in favor of plaintiff for the amount of \$54,439.52 to the extent that said judgment denied plaintiff's claim for \$172,351.64 with interest, it is hereby

ORDERED that an appeal be allowed to the United States Circuit Court of Appeals for the Third Circuit as prayed for, and that a transcript of such part of the record herein as the parties by præcipe duly designate be transmitted duly authenticated to said United States Circuit Court of Appeals for the Third Circuit, in the manner provided by law.

IT IS FURTHER ORDERED that citation to the defendant be issued in regular course.

IT IS FURTHER ORDERED that plaintiff file a bond, with good and sufficient security, that he will prosecute his appeal to effect and if he fail to make his plea good shall answer to defendant for all costs, said bond to be in the sum of two hundred and fifty dollars (\$250).

(Sgd.) JOHN BIGGS, JR.,

*United States Circuit Judge.*

April 27, 1938.

[Bond for costs on appeal omitted by consent.]

[Citation on appeal omitted by consent.]

[Orders extending return day of citation on appeal omitted by consent.]

**STIPULATION FOR DIMINUTION OF RECORD.**

(Filed July 6, 1938.)

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In order to eliminate duplications and matters irrelevant to the issues on appeal, it is stipulated that the Clerk of the United States District Court for the District of Delaware, in preparing the record for the Circuit Court of Appeals, be requested to—

(1) Print the docket entries.

(2) With respect to the complaint: Print all of first page; all of second page down to next to last word on next to last line. Omit last two words of next to last line, all of last line on page 2 and all of page 3 down to the semi-colon in seventh line from bottom, substituting asterisks to indicate elision.

Print balance of page 3, all of page 4 and the first twelve lines of page 5, omit balance of page 5, all of pages 6 and 7, and all but last seven lines of page 8, substituting asterisks to indicate elision.

Print balance of page 8, all of page 9, and bill of particulars.

Omit all exhibits annexed to complaint.

A footnote should be appended as follows: "Certain paragraphs and exhibits of the complaint are omitted as irrelevant to the issue on appeal having been disposed of by Stipulation No. 1 filed at the trial".

(3) Print defendant's pleas.

(4) With respect to bill of exceptions, omit title of case but print subtitle "Bill of Exceptions" and first seven lines thereunder. Omit next line and the ensuing stipulation and appearances, substituting asterisks to indicate elision.

Print "whereupon the parties offered and introduced the following two stipulations with the exhibits thereto attached, to wit:"

(5) Print Stipulation No. 1 (which eliminates certain issues and fixes amount of judgment in event of decision one way or the other).

(6) Print Stipulation No. 2, "Stipulation of Facts" together with all exhibits annexed thereto, except the computation annexed to Exhibit L, Exhibit M and Exhibit R. In place of the computation annexed to Exhibit L substitute: "The computation described in Exhibit L (letter from Irene du Pont, President, dated December 1919) is omitted by consent. It was a report on 'Net Asset Value Du Pont Common Stock', addressed to P. S. du Pont, Chairman, from Treasurer, showing detailed computation resulting in conclusion that net asset value of Du Pont common stock was \$320.94 per share, which said value is set out in the Court's finding number 22".

In place of Exhibit M, substitute "Exhibit M omitted by consent. It consisted of four ledger sheets of Laird & Company, brokers, showing transactions in Du Pont common stock from December 1, 1919 to July 2, 1920. It is agreed between the parties that the original Exhibits L and M may be filed with the Clerk of the Circuit Court of Appeals for the Third Circuit, if requested either by plaintiff or defendant".

In place of Exhibit R substitute, "Exhibit R to Stipulation of Facts omitted here by consent, being reproduced in full in paragraph 24 of the Findings of Fact of the District Court".

(7) Omit title of case and appearances, but print all of transcript of hearing on March 22, 1937, including opening statements, testimony of witnesses and colloquy between counsel and court at close of hearing.

(8) Print Exhibit 1, introduced at trial, but omit certificate at foot thereof.

Print Exhibit 2, introduced at trial, but omit certificate at foot thereof.

Omit Exhibits 3, 4, 6, 7, 8, 9, 13, 16 and 17, substituting "Exhibits 3, 4, 6, 7, 8, 9, 13, 16 and 17 omitted by consent—they were minutes of executive committee extending time of subcommittee to report".

Print Exhibit 5 introduced at trial, but omit certificate at foot thereof.

Print Exhibit 10, introduced at trial.

Print note "There was no Exhibit 11".

Print Exhibit 12, introduced at trial, but omit certificate at foot thereof.

Omit Exhibits 14 and 15, substituting "Exhibits 14 and 15, introduced at trial, omitted by consent. These were a letter from H. Fletcher Brown, Vice-President of Du Pont Company, to Richard V. Lindebury, dated December 3, 1919, requesting opinion on proposed agreement between company and executives, and Lindebury's reply, dated December 8, 1919, advising against such action. These exhibits are summarized in paragraph 11 of District Court's Findings of Fact".

Print Exhibit 16½, introduced at trial.

Print Exhibit 18, introduced at trial.

Omit Exhibit 19, substituting "Exhibit 19, introduced at trial, omitted by consent—it was a waiver extending the statute of limitations for assessment and collection of income tax".

Print note "There was no Exhibit 20".

Print Exhibit 21, introduced at trial.

(9) With respect to plaintiff's requests for findings of fact, print subtitle and the following statement: "Plaintiff's requests for findings of fact numbered 1, 2, 3, 4, 6, 7, 8, 12, 14, 15, 19, 20, 24, 32, 34 and 35 are omitted by consent as they are identical with the similarly numbered findings of the District Court hereinafter printed. Plaintiff's requests for findings of fact numbered 5, 10, and 13

are omitted by consent being substantially identical with the similarly numbered findings of the District Court hereinafter printed. Plaintiff's request for finding of fact numbered 11 is omitted by consent as it is identical with the District Court's finding numbered 11, except that the last sentence in the court's finding was not included in the request".

Print plaintiff's requests for findings of fact numbered 16, 17, 18, 21, 22, 23, 25, 26, 27, 28, 29, 30 and 31.

In lieu of plaintiff's request numbered 33, substitute "The first sentence of plaintiff's request numbered 33 is omitted by consent as being identical with the District Court's finding similarly numbered and hereinafter printed. The balance of plaintiff's request numbered 33 reads: '[print second and third sentences thereof]' "

Print plaintiff's requests for findings of fact numbered 36 to 47, inclusive.

Print plaintiff's requests for conclusions of law numbered 1 and 2.

(10) With respect to defendant's requests for findings of fact: Print statement "Defendant's requests for findings numbered 1 to 10 inclusive, 12, 14, 15, 19, 20, 21, 23, 24, 26, 27, 28, 29, 32, 33, 34, and 35 are omitted by consent as they are identical with the similarly numbered findings of the District Court hereinafter printed".

Defendant's requests for findings of fact numbered 13 and 25 are omitted by consent as being substantially identical with the similarly numbered findings of the District Court hereinafter printed.

In lieu of defendant's request for finding of fact numbered 11, print "Defendant's request for finding of fact numbered 11 is omitted here by consent as it is identical with the District Court's finding numbered 11; except that the last sentence in the court's finding was not included in the request".

Print defendant's requests for findings of fact numbered 16, 17, 18, 22, 30, 31 and 36 to 43 inclusive.

Omit defendant's request for conclusion of law numbered 1, substituting "Defendant's request for conclusion of law numbered 1 is omitted by consent as it is substantially identical with the District Court's conclusion numbered 1 hereinafter printed".

Omit defendant's request for conclusion of law numbered 2, substituting "Defendant's request for conclusion of law numbered 2 is omitted by consent as it is identical with the District Court's conclusion similarly numbered and hereinafter printed".

(11) Print findings of fact of District Court, with footnote "The exhibits incorporated in these findings by reference are reproduced ante. Those indicated by letters are exhibits to Stipulation No. 2, and those indicated by numbers are exhibits introduced at the trial".

(12) Print court's conclusions of law.

(13) Print court's opinion.

(14) Print plaintiff's exceptions to findings of fact, conclusions of law and opinion.

(15) Print court's order of April 6, 1938, overruling plaintiff's exceptions and directing judgment.

(16) Print judgment.

(17) Print petition for appeal.

(18) Print appellant's assignments of error.

(19) Print order allowing appeal.

(20) Omit bond for cost on appeal, substituting "Bond for costs omitted by consent".

(21) Omit citation on appeal, substituting "Citation on appeal omitted by consent".

(22) Omit orders extending return day of citation, substituting "Orders extending return day of citation on appeal omitted by consent".

**RICHARDS, LAYTON & FINGER,**  
*Attorneys for Plaintiff.*  
By **J. S. Y. IVINS,**  
*Counsel.*

**JOHN J. MORRIS, JR.,**  
*U. S. Attorney, District of Delaware,*  
*Attorney for Defendant.*

**JAMES W. MORRIS,**  
*Assistant Attorney General.*

**ANDREW D. SHARPE,**  
**LESTER L. GIBSON,**  
*Special Assistants to Attorney General.*

**CLERK'S CERTIFICATE.**

UNITED STATES OF AMERICA, }  
DISTRICT OF DELAWARE, } ss.:

I, HENRY C. MAHAFFY, JR., Clerk of the District Court of the United States for the District of Delaware, do hereby certify that I have carefully compared the foregoing writings with the respective originals thereof and find the same to be true and correct copies of said originals so full and complete as the same now remain on file and of record in my office, being a complete exemplification of the record and proceedings in the case of Pierre S. du Pont, Plaintiff-Appellant, v. Willard F. Deputy, Collector of Internal Revenue for the District of Delaware, Defendant-Appellee, No. 2 September Term, A. D. 1936, made up pursuant to the stipulation between counsel for respective parties filed in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Wilmington, in said District, this twelfth day of August, A. D. 1938, and the Independence of the United States of America the one hundred and sixty-third.

(Sgd.) H. C. MAHAFFY, JR.,  
Clerk U. S. District Court, District  
of Delaware.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 6816. October Term, 1938

PIERRE S. DU PONT, PLAINTIFF-APPELLANT

v.

WILLARD F. DEPUTY, COLLECTOR OF INTERNAL REVENUE FOR THE  
DISTRICT OF DELAWARE, DEFENDANT-APPELLEE

*Stipulation*

The defendant-appellee, Willard F. Deputy, having departed this life and Pearl E. Deputy and The Sussex Trust Company, a corporation of the State of Delaware, having duly qualified as administratrix and administrator of his estate, and the plaintiff-appellant being entitled in law to revive this cause against the personal representatives of the defendant-appellee, to simplify the proceedings to that end it is hereby

Stipulated that the cause may proceed with Pearl E. Deputy and the Sussex Trust Company, administratrix and administrator of the estate of Willard F. Deputy, substituted as parties defendant-appellee, in place of Willard F. Deputy, deceased.

RICHARDS, LAYTON & FINGER,

AARON FINGER,

*Attorneys for Plaintiff-Appellant.*

JOHN J. MORRIS, Jr.,

JAS. W. MORRIS,

*Attorneys for Defendant-Appellee.*

[Endorsements:] Stipulation to substitute Pearl E. Deputy and Sussex Trust Company, etc. Received and filed Sept. 16, 1938. William P. Rowland, clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6816. October Term, 1938

PIERRE S. DU PONT, PLAINTIFF-APPELLANT

v.

WILLARD F. DEPUTY, COLLECTOR OF INTERNAL REVENUE FOR THE  
DISTRICT OF DELAWARE, DEFENDANT-APPELLEE

*Order of substitution of party*

On the annexed Stipulation of counsel it is hereby Ordered that Pearl E. Deputy and The Sussex Trust Company, a corporation of

the State of Delaware, as Executrix and Executor of the last Will and Testament of Willard F. Deputy, late Collector of Internal Revenue for the District of Delaware, Deceased, be substituted as parties defendant-appellee, in this action, and that all further proceedings therein be entitled "Pierre S. Du Pont, Plaintiff-Appellant, v. Pearl E. Deputy and The Sussex Trust Company, a corporation of the State of Delaware, as Administratrix and Administrator of the Estate of Willard F. Deputy, late Collector of Internal Revenue for the District of Delaware, Deceased, Defendant-Appellee." Albert B. Maris, United States Circuit Judge.

[Endorsements:] Order Substituting Pearl E. Deputy and Sussex Trust Company as Administratrix and Administrator of the Estate of Willard F. Deputy, etc. Received and filed Sept. 16, 1938. William P. Rowland, clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6816. October Term, 1938

PIERRE S. DU PONT, PLAINTIFF-APPELLANT

vs.

PEARL E. DEPUTY AND THE SUSSEX TRUST COMPANY, AS ADMINISTRATRIX AND ADMINISTRATOR OF THE ESTATE OF WILLARD F. DEPUTY, DECEASED, LATE COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF DELAWARE, DEFENDANTS-APPELLEES

And afterwards, to wit, the 10th day of October, 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable J. Warren Davis, Honorable Albert B. Maris, and Honorable Joseph Buffington, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 28th day of March 1939, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

### *Opinion*

March 28, 1939

Appeal from the District Court of the United States for the District of Delaware

Before DAVIS, MARIS, and BUFFINGTON, Circuit Judges

BUFFINGTON, Circuit Judge: In the court below Pierre S. Du Pont brought suit against the Collector of Internal Revenue to recover taxes alleged to be illegally collected from him. Jury was waived and the case tried by the judge. By stipulation it was agreed

plaintiff was entitled to a judgment of \$54,439.52 on one of the issues involved and to a judgment of \$172,351.64 with interest (which would include the \$54,439.52) if plaintiff was successful in maintaining his claim therefor. The court entered judgment for plaintiff for \$54,439.52 with interest and held that "judgment for the plaintiff in any larger sum will be refused." Thereupon plaintiff took this appeal.

After due consideration, we are of opinion that in the latter respect the court erred and the record should be remanded with instructions to amend its judgment by making it for \$172,351.64 with interest from September 24, 1935, instead of for \$54,439.52 allowed. The reasons therefor we now state.

The income taxes involved are for the year 1931 as found by the court:

In 1919, the plaintiff maintained an office in Wilmington, Delaware, for the conduct of his business affairs. He had seven or eight employees in his office at that time. In 1920 he established an additional office in New York for the conduct of his business. He has maintained both such offices ever since such years. The expense of maintaining said offices was \$36,310.67 \* \* \* In 1919 he devoted more or less 50 percent of his time to his investments, which consisted in a large part of du Pont Company stock, although he had other investments in securities of different corporations. He changed his investments from time to time by the sale and purchase of securities but he was not a speculator and had practically no investments in brokerage accounts.

It appears that in 1919 the plaintiff borrowed from the Christiana Company, with a ten year maturity provision dating from December 23, 1919, nine thousand shares of the stock of the du Pont Company. The purpose of the taxpayer in so borrowing was found by the trial court as follows:

In order to insure good management of the affairs of the du Pont Company by enlisting permanently the services of able men, to encourage the executive committeemen in future effort to benefit themselves and other stockholders, and in recognition of the good work done by the executive committee for the company, the plaintiff, at the instance of the du Pont Company offered to sell 1,000 shares of the common stock of the du Pont Company to each member of the executive committee of the du Pont Company. The plaintiff did not have the purpose or intention of making a profit by the specific transaction of the sale of the 1,000 shares of the common stock of the du Pont Company to each of the committeemen, but he did have the purpose and intention to conserve and enhance the value of his own substantial beneficial stock holdings in the du Pont Company by endeavoring to secure for the du Pont Company a stable and efficient management. He deemed this result would be best accomplished by causing the members of the executive committee to become stockholders in the du Pont Company.

The court further found:

The agreement referred to was not entered into by the plaintiff with the Christiana Company with the intention or purpose of making a profit thereby.

When the ten-year maturity approached, the court found "he (Du Pont) did not have 9,000 shares of the du Pont Company stock available for delivery \* \* \*. The market for du Pont Company stock at this time was thin. Nine thousand shares of common stock of the du Pont Company could not have been purchased in the open market without substantially raising the price per share."

As noted above, du Pont's loan contract with the Christiana Company expired by its own terms December 23, 1929, a time, as the court takes judicial notice, of grave financial panicky conditions and at which Du Pont had not the stock to return.

In order to meet his contract at maturity Du Pont, on October 25, 1929, entered into a written contract with the Delaware Realty & Investment Company, of which he was not a shareholder, and which, as found by the court, "was not entered into \* \* \* with the intention or purpose of making a profit thereby," whereby that company agreed to loan to Du Pont the shares of the du Pont Company required by him to return to the Christiana Company as provided in the then-maturing contract of stock loan made in 1919.

The contract with Delaware further provided that within ten years from October 25, 1929, Du Pont would return to the lending company the du Pont Company stock so borrowed and pending such return he would pay to the lending company an amount in money equivalent to all dividends declared by the du Pont Company on its stock and reimburse Delaware for all national and state taxes paid by it.

In 1931, the taxable year here involved, Du Pont so paid the lending company the equivalent dividends in the amount of \$567,648 declared by the du Pont Company and also the \$80,063.56, being the amount of the federal and state taxes paid by the Delaware Realty & Investment Company. It will thus appear that the total of these two sums, viz, \$647,711.56, is the deduction which the plaintiff claims should be allowed him as provided by statute, viz, "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business."

It will thus be seen that the basic question involved is whether these payments made by Du Pont during the taxable year of 1931 to the Delaware Realty & Investment Company were "necessary expenses" paid by him in carrying on his business.

The first question involved is whether the transactions stated constituted business. What, if anything, was Du Pont's business? By the court's finding and by common understanding as evidenced by dictionary definition, business is "that which busies or engages time, attention or labor as a principal serious concern or interest; any particular occupation or employment habitually engaged in.

especially for livelihood or gain." Adopting this view, the court below, as noted above (held—and rightly so—"The plaintiff's business was primarily that of conserving and enhancing his estate.")

Accordingly, we are of opinion the payments in question made during the taxable year were ordinary and necessary expenses paid by Du Pont during that year and as such are deductible. In view of these facts, we have not felt it necessary to discuss the question whether these sums—which were measured by the yardstick of dividends declared and taxes imposed—were in reality and substance "interest" payments. Nor are we constrained to discuss the voluminous papers and transactions bearing on the contract with the Christiana Company. Whatever they were, Du Pont was in 1929 confronted by a situation wherein he was bound to return the stock borrowed from Christiana. In that serious situation he turned to a third and wholly alien company, the Delaware Realty & Investment Company, in which he was not a stockholder, and bargained with it for a stock loan for ten years which enabled him to perform his contract with Christiana, avoid the possibly disastrous enforcement by Christiana of its maturing obligation to return the borrowed stock, and at the same time gave him, "through his contract with Delaware Realty & Investment Company a ten-year loan of the borrowed stock with "the option to reduce or extinguish his indebtedness to Delaware Realty & Investment Company hereunder by the return to Delaware Realty & Investment Company of the shares owing to it in such amounts and at such times as the said Pierre S. Du Pont may desire."

So regarding, the record is remanded to the court below for further procedure in accordance with this opinion.

MARIS, Circuit Judge, concurring: Section 23 of the Revenue Act of 1928 provides that in computing net income for income tax purposes there shall be allowed as deductions "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." The District Court found as a fact in this case that "the plaintiff's business was primarily that of conserving and enhancing his estate." The finding was undoubtedly supported by ample evidence. If we premise this fact, as I think we must, it follows that the plaintiff was entitled, in computing his taxable net income for the year 1931, to deduct all the ordinary expenses paid during that year which were necessary to conserve his estate.

At the beginning of the year the plaintiff was faced with the fact that he owed the Delaware Realty and Investment Company 141,912 shares of common stock of E. I. du Pont de Nemours & Company. The history of this loan and the purposes for which the stock was borrowed are in my view wholly irrelevant. Whatever the reason, the fact remained that in 1931 he found himself under a binding obligation to the Delaware Company either to return the borrowed stock or to pay an amount equivalent to the dividends on the bor-

rowed shares plus the taxes paid by the Delaware Company by reason of the loan. Since he no longer owned the shares borrowed, the return of them would have necessarily involved the depletion of his estate by the amount required to purchase an equivalent number. He elected to take the only other course which was open to him and paid to the Delaware Company the sum of \$647,711.56, which represented the amount of the dividends paid on the stock plus the taxes of the Delaware Company with respect thereto.

This payment unquestionably conserved the plaintiff's estate. If it had not been made his invested funds would have faced the certainty of a serious diminution. The necessity of the expense is clear. The diminution of his principal, which would have resulted if the payment had not been made, would undoubtedly have carried with it an inevitable diminution in taxable income which might well have been substantially equivalent to the deduction here sought. The inherent justice of his claim will thus be seen.

I am equally satisfied that the expense was an ordinary one within the meaning of the statute. Certainly there is no expense in human experience which is more ordinary than that incurred by a debtor in fulfilling his agreement with his creditors. It is true that this expense usually takes the form of interest. It may well be that the expenditure which the plaintiff made in this case was a payment of interest in the broadest sense. It is certain, however, that it was compensation for the loan of stock which he had made and as such it was an ordinary and usual expense of a transaction of that character. *Dart v. Commissioner of Internal Revenue*, 74 F. 2d 845.

I accordingly concur in the conclusion reached by my colleagues that the amount of the judgment entered by the District Court in favor of the plaintiff should be increased from \$54,439.52 to \$172,351.64.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6816. October Term, 1938

PIERRE S. DU PONT, PLAINTIFF-APPELLANTS

vs.

PEARL E. DEPUTY AND THE SUSSEX TRUST COMPANY, AS ADMINISTRATRIX AND ADMINISTRATOR OF THE ESTATE OF WILLARD F. DEPUTY, DECEASED, LATE COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF DELAWARE, DEFENDANTS-APPELLEES

On appeal from the District Court of the United States, for the District of Delaware

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of Delaware, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby reversed, and the case remanded to the said District Court with instructions to enter judgment in favor of the plaintiff for the sum of \$172,351.64, with interest from September 24, 1935.

Philadelphia, March 28, 1939.

Per Curiam.

BUFFINGTON, *Circuit Judge.*

[Endorsements:] Order Reversing Judgment, etc. Received & filed Mar. 28, 1939. Wm P. Rowland, Clerk.

UNITED STATES OF AMERICA,

*Eastern District of Pennsylvania, Third Judicial Circuit, Sct.*

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record and proceedings in this Court in the case of Pierre S. Du Pont, Plaintiff-Appellant vs. Pearl E. Deputy and The Sussex Trust Company, as Administratrix and Administrator of the Estate of Willard F. Deputy, Deceased, Late Collector of Internal Revenue for the District of Delaware, Defendants-Appellees. No. 6816, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 8th day of June, in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the United States the one hundred and sixty-third.

[SEAL]

WM. P. ROWLAND,

*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

## Supreme Court of the United States

*Order allowing certiorari*

Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.